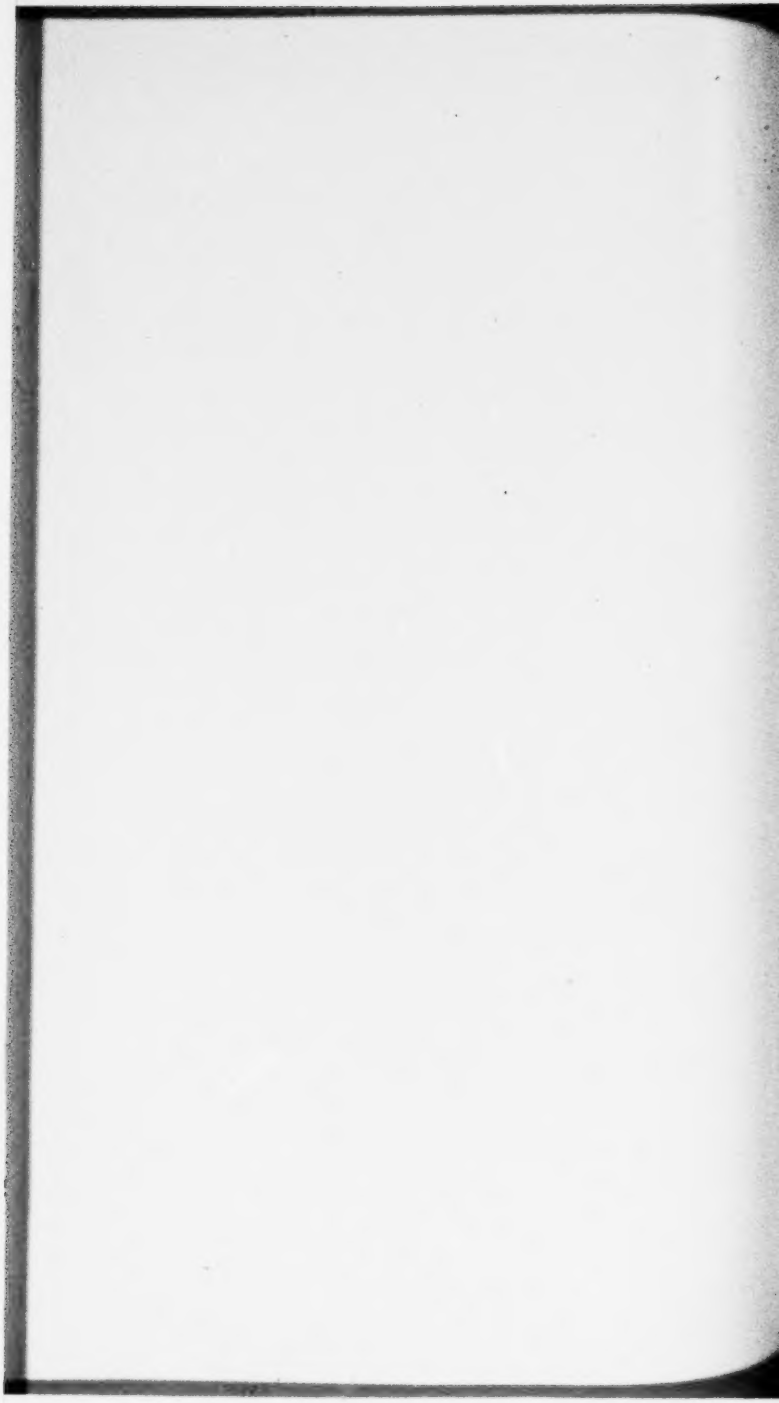


No. 189. 29.

Brief of Mr. Gen. [illegible] for Ex

Filed Nov. 26, 1898.

Supreme Court U. S.
FILED
NOV 26 1898
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

LA ABRA SILVER MINING COMPANY, appellant,
v.
THE UNITED STATES. } No. 189.

ON APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

WM. A. MAURY,
Special Assistant to the Attorney-General.

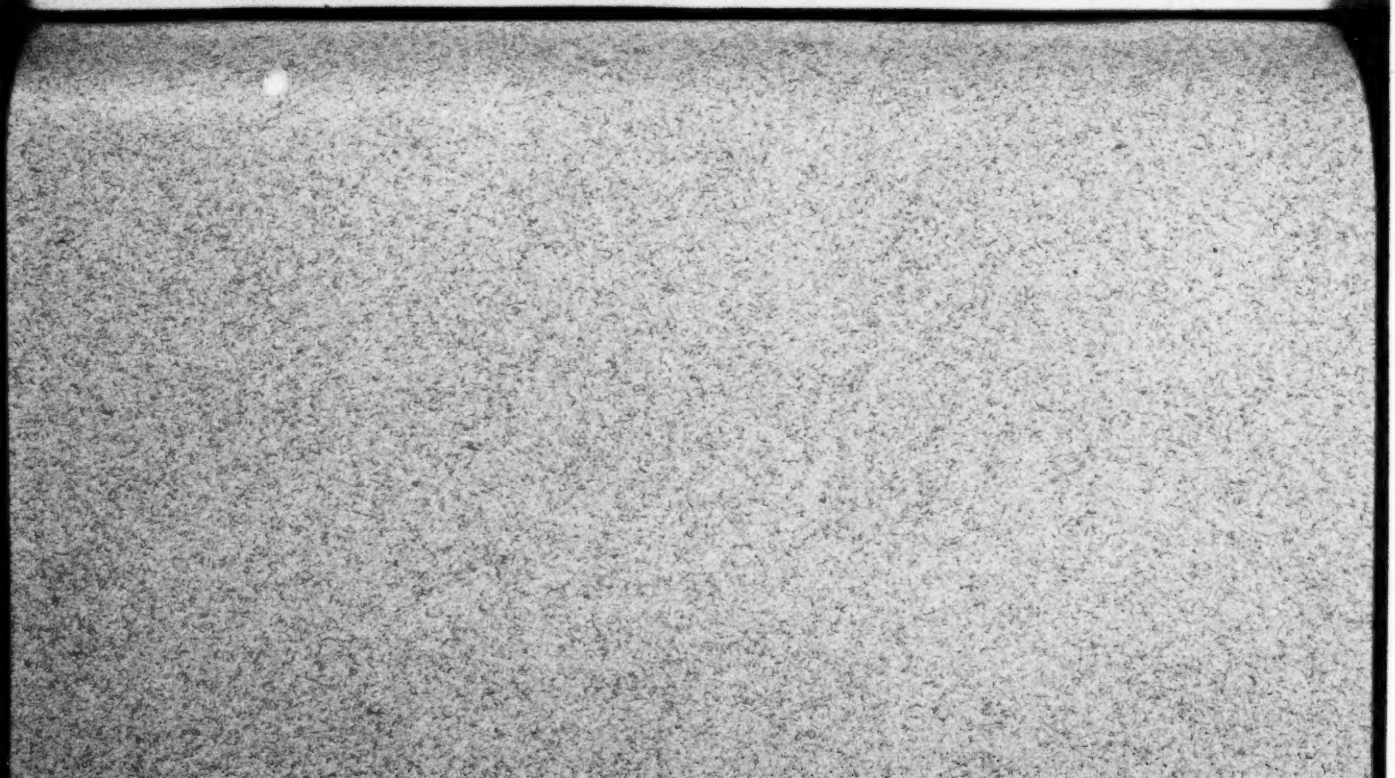


TABLE OF CONTENTS.

	Page.
Condensed statement of the bill	1
The demurrers	5
The answer	5
The decree	6
Allowance of appeal	6
Questions to be discussed in the first instance	7
Did the Court of Claims have jurisdiction?	7
If act of 1892 were an invasion of executive or judicial power the act would not be wholly void	28
Act of 1892 was approved in a constitutional way	31
Congress may confer on Court of Claims a function not within the judicial power	45
If act of 1892 did not confer judicial power on Court of Claims, this appeal must fail	48
Under act of 1892 there is no appeal to this court	48
Argument on the facts	57
Improbability of claimant's case	60
Suspicious generality of memorial	77
Exall's testimony before commission shows claimant's bad faith	83
The Perez affair	89
No denial of protection, as falsely claimed	102
Exall's testimony further considered	113
Exall and others on the value of the mines	117
Exall in rebuttal	123
Exall the type of the other witnesses before the commission	129
Recklessness and mismanagement	157
The persecution theory	167
A transformation	197

to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns," and in case it should be so found by the court as to the whole or any severable part of said award, that a decree should be entered barring and foreclosing the claimants under the award or such part thereof from any right to the money received from the Republic of Mexico by the United States for or on account of said award.

The Court of Claims is clothed by the act with jurisdiction over the subject in the section following:

> SEC. 2. That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said Mixed Commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

(See Appendix A for the act in full.)

The bill or petition (pp. 1–22) begins by referring to the provisions of the treaty of July 4, 1868, between the United States and Mexico, which had for its principal object the establishment of a commission to determine the validity of claims of

the citizens of either Government against the other, and states that such a commission was duly established:

That among the claims against Mexico presented to the commission by the United States was that of La Abra Company, amounting to $3,000,030:

That the commissioners disagreed upon the claim, which thereupon went before the umpire, who made an award in favor of the company for the same of $683,041.32, principal and interest, the same being in the nature of damages falsely alleged to have been suffered by the company in consequence of having been driven from its silver mines and out of Mexico by the authorities of that country, and of having been despoiled of its property by illegal exactions and seizures, as appears by the proceedings in the case annexed to the bill, and designated Exhibit A:

That after the making of the said award the falsity of the evidence on which it was based became apparent by the discovery and the delivery into the hands of Mexico of the suppressed letter-press copy book kept at the company's mines during the time covered by the claim, and other documentary evidence, all of which is annexed to the bill and designated Exhibit B:

That the executive department of the United States Government became deeply impressed by the after-discovered evidence of fraud and perjury brought to its notice by the Government of Mexico,

and laid the same before Congress with the recommendation that provision should be made for a thorough and effective examination into the charges of fraud, the department itself being without the necessary means for conducting such an examination:

That the result of this action of the Executive was the passage of the act of December 28, 1892, above referred to.

The bill then proceeds to point out the various particulars of the Abra claim which are negatived and falsified by the said after-discovered evidence, and to show that said claim was in every essential particular supported by false and perjured testimony, which was known to be such by the said company, and, consequently, that the "whole of the said award was obtained by fraud, effectuated by means of false swearing, subornation of witnesses, and other false and fraudulent practices on the part of the said defendant company, its agents, attorneys, and assigns."

The bill devotes considerable space to an enumeration of the large number of persons who claim interests in the said award on one pretext or another, making them parties, and seeks discovery from each of them with reference to certain particulars.

The bill states the character of the controversy that has arisen between the United States and the parties claiming interests in the said award.

The bill then prays for full discovery, and that the defendants and each of them may be restrained and enjoined from setting up any claim to any part of said award or of the undistributed proceeds thereof; and that the said award may be declared, by decree of court, to have been wholly obtained by means of false swearing and other false and fraudulent practices on the part of said defendant company, its agents, attorneys, and assigns; and then follow the prayers for general relief and for process.

DEMURRER.

La Abra Company and several other defendants demurred to the bill (pp. 311–315).

The demurrer, after full argument, was overruled, "with leave to the respondents to answer, if they so elect, on or before the first day of July next" (p. 317. See opinion of the court, pp. 318–356); but this order was afterwards modified by substituting June for July (p. 423½).

ANSWER.

Availing itself of the privilege extended by this order, La Abra Company filed an elaborate answer to the bill (pp. 424–460).

This answer being under the common seal of the Abra Company, a body corporate, and, therefore, not evidence against the bill, and, furthermore, being

mostly argument, need not, it is conceived, be particularly noticed, at least in this part of the brief.

The cause being at issue, a large amount of testimony was introduced on both sides, and the cause having come on for hearing was elaborately argued at the bar; but the chief justice having died while it was under consideration, and there being some "difference in the minds of the judges who sat in the former hearing," the cause was remanded to the trial calendar (p. 803) and again elaborately argued at the bar.

DECREE.

On June 24, 1897, the court entered the following decree:

> The court finding from the evidence that the award made by the United States and Mexican Mixed Commission in respect to the claim of said company was obtained as to the whole sum included therein by fraud effectuated by means of false swearing and other false and fraudulent practices on the part of said company and its agents; it is therefore hereby ordered, adjudged, and decreed that all claims in law and equity on the part of said company, its legal representatives and assigns, be forever barred and foreclosed of all claim to the money received from the Republic of Mexico for or on account of such award. (P. 852.)

The opinion of the court, delivered by Weldon, J., is to be found at page 804 of the record, and the opinion of the chief justice at page 843.

APPEAL.

An appeal to this court was applied for and allowed (p. 853), and the cause is now here for review.

QUESTIONS TO BE DISCUSSED IN THE FIRST INSTANCE.

On January 24, 1898, this court entered an order directing that when this cause is called for argument the following questions shall be discussed, in the first instance, namely:

(1) Whether the Court of Claims had jurisdiction of this case?

(2) Whether this court has jurisdiction of this appeal?

(3) Whether the appellate jurisdiction, if any, of this court extends to a review of the facts?

I.

DID THE COURT OF CLAIMS HAVE JURISDICTION?

In the absence of assignments of error in the record, we shall discuss this question with reference to the ten objections specified in the demurrer to the bill.

All of these objections profess to turn on the validity of the act of December 28, 1892, conferring jurisdiction on the Court of Claims, and yet, laying out of view the ninth one, which proceeds on the ground that the act was not approved by the President in accordance with the Constitution, and so relates to a matter somewhat extraneous to the act itself, none of the causes of demurrer assigned raises an issue which can be said to be

founded on any fair view of its language. Each misses its aim, applying to matters not at all involved in the statute.

The grounds of demurrer referred to, omitting the first one, which is sweeping and contains all the others, are briefly as follows:

That the questions, whether the award was obtained by fraud and whether the undistributed money paid thereon should be returned to Mexico, are not within the judicial power of the Constitution, but belong exclusively to the executive department, being diplomatic and political in character:

That the United States has no such interest in the matter of the bill as will support the suit:

That Mexico is the real party in interest and has forfeited all right to relief in equity by laches, and therefore that the United States has no right to demand relief for her:

That the award of the umpire is the final determination of a court of exclusive jurisdiction, which Congress has no power to reopen; that through the treaty-making power alone could the award be set aside or reopened; that that power, after considering the grounds for relief stated in the bill, refused to reopen the award, and consequently that the same is protected in every particular by the principle of *res judicata:*

That it appears on the face of the bill that the question of fraud therein presented was tried and de-

termined by the umpire and can not be reexamined and redetermined:

That the act under which the suit is brought undertakes to direct and bind the courts on which it confers jurisdiction to receive evidence and apply legal principles which are erroneous and contrary to the law as administered in the courts of the United States, and to prescribe to the courts the weight and effect to be given to the evidence and the method by which they shall reach the conclusion that the award was obtained, in whole or in part, by fraud:

That the bill does not present a case for relief.

In view of the efforts made in the court below, and to be repeated here, to wrench the language of the act of December 28, 1892, from its just sense, it is proper to aid the interpretation of that language by throwing upon it the light of the facts in which the act became a law. As was observed by Mr. Justice Bradley, in giving the opinion of the court in *Siemens* v. *Sellers* (123, U. S., 276, 285), the interpretation of the words of a law "is often to be sought from the surrounding circumstances and preceding history."

When the communities living around and near the spot in the State of Durango, Mexico, where the Abra Company had been engaged for about three years in quixotic efforts to wring prosperity from a cluster of exhausted mines, were startled by the news that here, in this capital city of Washington,

a grave tribunal had decided that this bankrupt company had been savagely driven from its mines and other property by the Mexican authorities, and had been awarded, by that tribunal, the round sum of $683,041.32, in Mexican gold, *as indemnity*, it is no wonder that the forgotten books and papers which the company left behind, as of no value, *when it abandoned* work in *its worthless mines*, should have come to light, to stagger the umpire who made the award and the Government that, through the imposture of its own citizens, urged the claim on which the award was based.

This evidence, and other after-discovered evidence of a testimonial character, which is in the record, made a profound impression. Secretary Bayard, speaking of it and of the after-discovered evidence bearing on the award by the same tribunal in favor of Benjamin Weil, in his communication to the President of February 28, 1888, uses the following language:

> It is a remarkable fact that whenever, since the distribution of the Mexican fund was commenced, the deliberate judgment of the official authorized by Congress to make such distribution has been recorded upon the two awards in question, it has uniformly been to the effect that the evidences that the United States, in presenting the claims, had been made the victim of fraudulent imposition were of such a character as to require investigation by a competent tribunal, possessing appropriate powers for that purpose. (Senate Ex. Doc. No. 109, Fiftieth Congress, first session, p. 6.)

Secretary Evarts, in a communication to the President dated August 8, 1879, marked "confidential,"

after having examined "the proofs, documents, and arguments" laid before him by the Mexican Government in both the Weil and Abra cases, reached the conclusion that "the honor of the United States does require that these two cases should be *further investigated* by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud." (Senate Report No. 1316, Forty-ninth Congress, first session, dated June 11, 1886.)

The Secretary was, furthermore, of opinion that such further investigation could not be made by the Executive, saying: "The Executive Government *is not furnished with the means of instituting and pursuing methods of investigation* which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation *must proceed from Congress.* I would advise, therefore, that the proofs and conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress *for the exercise of their plenary authority in the matter.*" (*Ibid.*).

On August 13, 1879, President Hayes wrote at the foot of this communication: "The foregoing conclusions of the Secretary of State are approved." (*Ibid.*).

As a result, the new evidence was communicated to Congress by the President, with a decided expression of opinion that Congress should provide for the further investigation of these claims by *some domestic tribunal.* (*Ibid.*)

President Arthur, being similarly impressed by the new evidence, negotiated a treaty with Mexico on July 13, 1882, which, after reciting that the Weil and Abra cases "should each be opened and retried," proceeded to make provision for the rehearing of them by an arbitrator to be agreed upon between the Secretary of State and the representative of Mexico in Washington; but the treaty failed of ratification, and properly, it would seem, because, to state a single objection, it was hardly fitting that another government should have participation in the settlement of a question involving the honor and duty of the United States. It was the sounder view, and the one that prevailed, that such a question should be determined by a domestic forum.

Secretary Bayard, in his communication of February 28, 1888, reporting the rejection of the treaty to the President, says:

> It is fair to assume that the rejection by the Senate of the treaty signed by Mr. Frelinghuysen, for an international rehearing of the awards, *was in no sense an expression of opinion adverse to their investigation*, which Mr. Evarts had recommended. It is rather to be regarded as an approval of the opinion which he also expressed, *that the investigation should, under the circumstances, be made by this Government for itself, as a matter affecting solely its own honor.* (Senate Ex. Doc. No. 109, Fiftieth Congress, first session, p. 6.)

By a communication dated March 5, 1888, President Cleveland referred the matter to Congress, with the recommendation of Secretary Bayard that Congress "take action to provide expressly for the reference of the claims in question to the Court of Claims or such other court as may be deemed proper, in order that a competent investigation of the charges of fraud may be made." (Senate Report No. 1630, Fiftieth Congress, first session, pp. 76–84).

The Senate Committee on Foreign Relations, in a report recommending legislation on the subject, take occasion to say:

> The examination of these charges, made by successive Presidents, has led them practically to the same conclusion, and that being adverse to the integrity of the claim [La Abra], it is demanded by the honor of the United States that *its courts* should be required to pass upon its merits *with judicial care and solemnity.* (Senate Report No. 1454, Forty-ninth Congress, first session, pp. 4, 5.)

During the ten or twelve years that Congress had under consideration the request of the Executive to provide, by law, a proper method of investigation into the charges of fraud and perjury in procuring the two awards, the appellant, apparently dead to any sense of the serious reflection upon it involved in Mexico's charges, opposed every suggestion of legislation looking to an investigation with the pertinacity and resource which a corps of able counsel brought to its assistance.

In that remarkable effort to forestall investiga-

tion, *honor was apparently nothing* to the Abra Company, but the principle of *res judicata*, with its talismanic power of making *black* white, was then and *is now everything.*

The desperation of this struggle to baffle the Executive and Congress, in their efforts to get at the truth, is shown by the single circumstance that the *whole sum* of $240,683.06, distributed to the company under the award, *went for fees and expenses*, and "*not one cent*" *to the stockholders*, as Garth, a former treasurer and a stockholder of the company, swears. (p. 730.)

The counsel of La Abra Company, if they had had their way in this condition of things, would have placed their Government in an attitude of pitiable helplessness, leaving it no alternative to paying over the balance of the award to the company, *fraud or no fraud.* Indeed, so extreme was the course of counsel, that, when the treaty submitted to the Senate for the purpose of reopening the award was under the consideration of that body, the contention was set up that it transcended the authority of the treaty-making power to put at large again the questions adjudicated by the award, and thus destroy the so-styled vested right of the Abra Company in the award.

Since the rejection of the treaty, counsel have found it convenient *to take another tack*, namely, that the only outlet from the embarrassing situation of the

United States is to provide by a treaty with Mexico for a new trial of the issues involved in the award! *Anything to stifle investigation!*

It was this disparaging view of the just powers of our Government that evoked the following energetic reflections from the Mexican minister, Mr. Zamacona, in a communication to the Secretary of State, dated December 22, 1881:

> This legation can not for one moment suppose the political mechanism of a country, to which many others turn their eyes as to a model, to lack the means of frustrating a great fraud originated to the detriment of a friendly nation which is sparing no pains to fulfill its obligations toward the United States; nor can it believe that the only course remaining open to Mexico is to pay a heavy tribute to deceit and perjury, or that the Government of this Republic is prepared to serve as an instrument for the enforcement of so painful a sacrifice. (House Ex. Doc. No. 103, Forty-eighth Congress, first session, p. 640.)

The Government of Mexico, so far from making the after-discovered evidence a ground for impeaching the award, has punctually paid every dollar of it into the hands of the United States.

The Mexican minister, Mr. Mariscal, in a communication to the Secretary of State, dated December 8, 1876, expressly disclaims any intention "to put in doubt the final and conclusive character of the above-mentioned awards," meaning the Weil and Abra awards (Sen. Rep. No. 27, Forty-fifth Congress, second session, p. 30). Protestations of a similar character occur in the subsequent diplomatic correspondence between the two Governments

on the subject of these fraudulent awards. It is entirely clear, therefore, that the Government of Mexico has at no time sought to impeach the validity of the Abra award.

The award having been wholly paid and satisfied by Mexico, that is to say, having become *extinct*, before the act of 1892 was passed, it is equally clear that it could not have been the intention of Congress in that act to submit to the Court of Claims a moot case involving the validity of this *extinct award*, with a right of appeal to this court.

Every question as to the validity of the award having thus been removed from the arena of controversy, the embarrassment felt by the United States at the time the act of December 28, 1892, was passed was as to which of two alternative courses it should pursue with reference to the undistributed money in its hands, namely, whether it should pay the amount to the Abra Company, which demanded it *as a right*, or return it to the Government of Mexico, *which demanded nothing*, but threw itself unreservedly on the honor and magnanimity of the United States, having every reason to expect that the latter Government would act up to the friendly spirit of the treaty under which the award was made—that is to say, in a manner "to maintain and increase the friendly feelings between the United States and the Mexican Republic, and so to strengthen the system and principles of repub-

lican government on the American continent," to borrow the words with which the treaty begins.

Looking back to this controversy before the Executive and Congress, now, happily, passed into history, it is simply amazing that so much contention should have taken place as to the right and the duty of this Government to refuse to be the tool of its own citizens in carrying out a gigantic fraud against a friendly power; as if a government, imbecile and devoid of responsibility under such circumstances, would be worthy of a place in the family of nations.

Fortunately for the cause of administrative government, this court was enabled to take hold of the very question, in the cases of *Frelinghuysen* v. *Key* (110 U. S., 63), and *Boynton* v. *Blaine* (139 U. S., 306), and relieve it from the imaginary doubts and difficulties with which it had been obscured by the ingenuity of counsel.

These cases were both decided before the special act of 1892 was passed, and must have entered largely into it.

A strong effort was made, in the first case, to compel the Secretary of State, by mandamus, to pay over to appellant and its assigns what remained undistributed of the Abra award. In the second case, a similar effort was made by one of the parties claiming an interest in the undistributed money that had been paid on the Weil award.

The attempt in the earlier case, *Frelinghuysen* v. *Key*, was extreme, for it sought to subject the Secretary of State to judicial coercion, in the face of the pendency before the Senate of the above-mentioned treaty providing for opening both awards.

But this court refused to countenance the effort to subordinate executive discretion and national honor to the so-styled vested right of appellant in the award *and in the fraud.*

The court declared the underlying principle on which the controversy over the proceeds of the award must be determined when it said:

> The United States, when they assumed the responsibility of presenting the claims of their citizens to Mexico for payment, entered into no contract obligations with the claimants to assume their frauds and collect on their account all that, by their imposition of false testimony, might be given in the awards of the Commission. As between the United States and the claimants, the honesty of the claims is always open to inquiry for the purposes of fair-dealing with the Government against which, through the United States, a claim has been made (pp. 75, 76).

This was the germ of the much-slandered act of December 28, 1892.

The argument of vested rights in the award is completely rejected by the court as an obstacle to the Executive's agreeing with Mexico to open the award, or taking any other course with reference thereto that the honor of the United States or its duty to Mexico might dictate.

The subsequent case of *Boynton* v. *Blaine* (139 U. S., 306) more than affirms *Frelinghuysen* v. *Key* (*supra*), holding that money paid the United States

by a foreign power, on a claim urged by the United States for a citizen, is practically the money of the United States, until paid over to the citizen, following the case of *Angarica* v. *Bayard* (127 U. S., 251).

Boynton v. *Blaine* was decided in March, 1891, and in less than two years was followed by the special act of 1892.

Coming now to the jurisdictional act itself, it begins with a preamble that recites in the very words of the Executive an existing necessity for legislation looking to a judicial investigation of the charges of fraud made by Mexico.

> Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the *case* of La Abra Silver Mining Company, has heretofore reported that the "honor of the United States requires" that *said case* "should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud," but that "the executive Government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress;" and
>
> Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that *said case* "be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to *said claim* may be fully investigated."

It will be noted that, according to the preamble, it was the "*case*" and *not the claim or the award* of La Abra Silver Mining Company that called for investigation, the claim and the award being things

of the past, having been fully satisfied by Mexico, some years before.

The "case" referred to was the demand of the company for payment of the undistributed proceeds of the award which was being urged upon the Executive in the face of overwhelming evidence of fraud. It was, in other words, a "*case*" between the United States and *its own citizens*, purely *domestic* in character, and requiring investigation by a domestic tribunal, as any other controversy between the Government and a citizen.

The United States, as has been stated, having repelled the attempts to fasten a technical trust on the money in its hands in favor of the Abra company and its assignees, and having successfully vindicated its right to absolute control over that money, while in its hands, Congress, in its desire to relieve and ease the conscience of the Executive, could now, without danger of compromising the United States in any way, formulate an issue between the United States and those claiming the money, and direct the same to be tried and determined by some court, with power to render a final judgment.

Accordingly, Congress (section 1) directed the Attorney-General to bring "a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award or any part thereof in the act

mentioned," for the purpose of determining the following issue:

> **Whether the award made as aforesaid in respect of the claim of the said defendant company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said defendant company, or its agents, attorneys, or assigns.**

The act then proceeds to declare that, if such fraud is established, the company, its legal representatives or assigns, shall be barred and foreclosed as to all claim in law or equity "*to the money or any such part thereof* received from the Republic of Mexico *for or on account of such award*," and further declares, in a subsequent section (4) that, in such case, the President of the United States is "*authorized*," not directed, to return the undistributed money or any part thereof to the Government of Mexico.

The concluding section (5) declares that, during the pendency of the suit to be brought, "it shall not be lawful" for the Secretary of State, *not the President*, to make payments on the award; and further declares that, in case it should be adjudged that the award, "or any definable and severable part thereof," was not obtained by fraud, the Secretary of State, not the President, "*shall proceed to distribute* so much of the said award as shall be found not so obtained through fraud, or the proceeds thereof remaining for distribution, if any, to the persons entitled thereto." (See Appendix A for the act in full.)

The underlying principle of the act of 1892 is, that when this Government assumed to prosecute the Abra claim before the commission the claim passed under its absolute control, as much so as though it had been a public claim from the beginning, it not being agreeable to reason or law that the action of the Government, with reference to the matter, should be hampered in any way by the control or interference of the claimant. Upon no other theory can the issue, made up by the act between the United States, with the proceeds of the award in its own hands, and the claimant company and its assigns, be understood.

To enter upon the discussion of a proposition so well settled by judicial authority and by the practice of the Executive branch of the Government would be a waste of time. (*Frelinghuysen* v. *Key*, 110 U. S., 63; *Angarica* v. *Bayard*, 127 U. S., 251; *Boynton* v. *Blaine*, 139 U. S., 306; *The Great Western Insurance Company* v. *United States*, 19 C. Cls. R., 217; S. C., 112 U. S., 193; *Rustomjee* v. *The Queen*, L. R., 1 Q. B. D., 487; S. C., 2 Q. B. D., 69; *Burnand* v. *Radocanachi*, L. R., 5 C. P. D., 424; S. C., 6 Q. B. D. (C. A.), 633; S. C., 7 Appeal Cases (H. L.), 333; Wharton's Int. Law Dig., vol. 2, § 220, 2d ed.).

It is also clear that there was nothing in the provision of the treaty between the United States and Mexico making the decision on each claim sub-

mitted to the commission "absolutely final and conclusive" to prevent either Government from refusing to pay over to one of its citizens the proceeds of an award shown to have been the result of false and fraudulent practices on the part of such citizen. In the case of *Frelinghuysen* v. *Key* (*supra*), this court says, on this subject:

> The presentation by a citizen of a fraudulent claim or false testimony for reference to the commission was an imposition on his own government, and if that government afterwards discovered that it had in this way been made an instrument of wrong towards a friendly power, it would be not only its right but its duty, to repudiate the act and make reparation as far as possible for the consequences of its neglect if any there had been. International arbitration must always proceed on the highest principles of national honor and integrity. Claims presented and evidence submitted to such a tribunal must necessarily bear the impress of the entire good faith of the government from which they come, *and it is not to be presumed that any government will for a moment allow itself knowingly to be made the instrument of wrong in any such proceeding. No technical rules of pleading as applied in municipal courts ought ever to be allowed to stand in the way of the national power to do what is right under all the circumstances. Every citizen who asks the intervention of his own government against another for the redress of his personal grievances must necessarily subject himself and his claim to these requirements of international comity. None of the cases cited by counsel are in opposition to this.* They all relate to the disposition to be made of the proceeds of international awards after they have passed beyond the reach of the governments and into the hands of private parties. The language of the opinions must be construed in connection with this fact. The opinion of the Attorney-General in Gibbes's Case, 13 Op., 19, related to the authority of the executive officers to submit the claim of Gibbes to the second commission after it had been passed on by the first, without any new treaty between the governments to that effect; not to the power to make such a treaty (p. 73). (*Italic our own.*)

Again says the court, in that case, in a passage already quoted (*supra*):

> The United States, when they assumed the responsibility of presenting the claims of their citizens to Mexico for payment,

entered into no contract obligations with the claimants to assume their frauds and to collect on their account all that, by their imposition of false testimony, might be given in the awards of the commission. As between the United States and the claimants, the honesty of the claims is always open to inquiry for the purposes of fair dealing with the government against which, through the United States, a claim has been made (pp. 75, 76). (*Italic our own.*)

It being clear now that the honor of the United States required that it should seriously investigate the charges of fraud in obtaining the award brought by Mexico, is there room for question that it was competent for Congress to confer jurisdiction on the Court of Claims to make such investigation?

It is true, that discussion had developed, at one time, some difference of opinion on the subject in Congress, but this was entirely due to the success with which the able and persistent counsel of the company had confused and darkened what they professed to enlighten.

At last, however, Congress saw through the sophistries and obstructive tactics of counsel, and passed the act of 1892 by the *overwhelming vote* of 43 to 5, in the Senate, and *without a division*, in the House.

Proceeding, as the act does, on the concession by Congress and the Executive of an ultimate duty on the part of the United States to turn over the money in hand to the claimant company and its assigns, in case no paramount duty to return it to Mexico should arise, from proof of her charges of fraud, the question left to the court to adjudge finally, namely, whether the company and its as-

signs should be "*barred and foreclosed of all claim to the money or any part thereof*" in consequence of such imputed fraud, would seem to be clearly within the judicial power of the Constitution, which entends "to controversies to which the United States shall be a party."

But it is better to give the views of the learned court below as to the character of the subject-matter submitted to its jurisdiction by the act:

> By the act of 1892 the United States recognizes the fact of the claim of the company to the unpaid portion of the award, and by that recognition establishes in the company the existence of a right, which becomes the subject-matter of judicial cognizance by the fact that it is recognized; and by the force of the statute it passes from a mere grace as against the sovereign to a right susceptible of justiciable determination.
>
> The recognition by the United States of the claim of the company has imparted to it the qualities of property which, as between the company and the United States for the purpose, not of determining a political question, but to ascertain a fact, is sufficient to support the judicial proceeding contemplated by the statute. Congress, by the act of 1892, declared a trust in the remaining funds for the purpose of determining the question of fraud urged by the Republic of Mexico, and conferred on this and the Supreme Court the judicial power of deciding that question. The statute provides, "to determine whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained as to the whole sum included therein or as to any part thereof by fraud effectuated by means of false swearing or other false or fraudulent practices on the part of said La Abra Company." Congress having recognized the claim, there was by the force of that recognition a justiciable right which might be made the basis of judicial jurisdiction, as it is by the provisions of the act.
>
> The act of 1892 having recognized a claim on the part of the company, equitable in its character, and Mexico, in subordination to the judgment of the commission, having questioned the justice of the claim, the Government finds itself in the condition of a trustee, having in its possession money to which it lays no claim as property, files this bill in the form of a bill of inter-

pleader, or to quiet title, to have judicially determined its duty with reference to the money as property. The unpaid balance of the award by the act of 1892 belongs either to the company or the Republic of Mexico, and while Mexico is not a claimant, in the language of one of its communications to the State Department it is said, "not to prevent the awards made by the umpire in the now extinct Mixed Claims Commission, but only in the interest of rectitude and justice to render manifest the fraud committed by the parties interested." (*29 C. Cls., R., 432, 517, 518.*)

Undoubtedly, it was wise that Congress, in providing for the decision of the question of fraud, should also provide for the final decision of any right or equity in the fund claimed or that might be claimed by the company or its assignees, as against the United States, in order that the door should be closed to any possible future claim of the said parties against the United States, in case the court should find that the award was obtained by fraud.

It was the authority conferred upon the Court of Claims to render a judgment barring and foreclosing the Abra Company and its assignees as to all right in the proceeds of the award, or any severable part thereof, in case of proof of fraud in procuring the same or any such part thereof, on the one hand, and the distinct direction to the Secretary of State to pay over the fund to the parties entitled, in case the court should adjudge that the award, in whole or in part, was not procured by fraud, on the other hand, that brought the suit within the judicial power of the Constitution.

The statute avoids conferring jurisdiction on the court to decree as to the disposition of the undis-

tributed proceeds of the award, in case it should be found that no fraud or perjury was used in procuring it, but discreetly provides what shall be the duty of the Secretary of State in that event, thus avoiding the necessity of such a decree, but at the same time laying the Secretary under a duty as imperative as a decree.

Whatever the rights of appellant in the undistributed proceeds of the award may be, this court, as we have seen, has twice decided that those rights *are subordinate to the right of the United States* to retain such proceeds until it shall be satisfied that to pay the same to appellant and its assigns would not be to aid them in the consummation of a fraud against the Government of Mexico.

Looking at the act of 1892 in the light of its history, as already shown by documentary evidence, the specifications of demurrer, except the one relating to the approval of the act, *which should have been a plea*, seem to have no relevancy to the case made in the bill. They are all wide of the mark.

How is it possible, looking at the real case before the court, to see in the action of Congress an invasion of the treaty-making power in the mere fact of clothing the Court of Claims with jurisdiction to decide a question which has arisen between the United States and *certain of its own citizens*, and which *deeply involves the honor* of the Government?

If those citizens imposed a fraudulent claim on

their Government for the purpose of being prosecuted against Mexico, and, by means of perjured testimony, enabled their Government to procure an award for the same, which Mexico has fully satisfied to it, this court has solemnly decided that that Government is in honor bound to withhold the money so paid from the contrivers and perpetrators of the crime and to return the same to the hands from which it was received; at least, such we understand to be the effect of the language above quoted from the opinion of the court in *Frelinghuysen* v. *Key*.

It is idle, therefore, to say, in the face of that language, that the despotic principle of *res judicata* or any other principle of municipal law "stands in the way of the national power *to do what is right under all the circumstances*."

BUT, IF IT SHOULD APPEAR TO THE COURT THAT THE ACT OF 1892 INVADES THE DOMAIN OF THE EXECUTIVE OR JUDICIAL DEPARTMENT, AS CONTENDED, THE ACT IS NOT WHOLLY INVALIDATED THEREBY.

When it is considered that the primary object of the statute was to respond to the repeated requests of the Executive for legislation that would afford the means for instituting a thorough investigation into the charges of fraud made by Mexico, it would be a most unfortunate result if this court should hold the entire act unconstitutional and void because

Congress, after providing for a judicial examination into the facts by the Court of Claims, went a step further, and provided for certain subsidiary matters, which, it is alleged, were beyond its constitutional authority.

We think that the hopes of this country and Mexico are not to be disappointed by such an outcome of the energy that has been expended in the effort to overcome the obstructive opposition of the Abra Company and reach the settlement of a matter which has vexed the relations between the United States and Mexico for many years.

This court has repeatedly held that the good parts of a statute, void in one or more particulars, should be allowed to have effect where they are not inextricably involved with the bad. The touchstone for the resolution of such questions is given in *Louisiana* v. *Allen* (103 U. S., 80, 84), where it is said:

> The point to be determined in all such cases is whether the unconstitutional provisions are *so connected with the general scope of the law as to make it impossible, if they are stricken out, to give effect to what appears to have been the intent of the legislature.*

We know of no better way of getting at the legislative intent in passing the act of 1892 than by looking into its preamble, which is "*a key to open the understanding of the statute*," and which, for convenience, is now quoted for a second time in this brief:

> Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the case

of La Abra Silver Mining Company, has heretofore reported that the "honor of the United States requires" that said case "should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud," but that "the executive Government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress;" and

Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that said case "be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to said claim may be fully investigated."

We submit that this preamble leaves no room for doubt that the great purpose of the act was to secure an investigation of the question of fraud by the Court of Claims, in the spirit in which it had been asked for by the President and Secretary of State; and that the further purposes of the act are plainly severable from that leading one, which can easily stand by itself although the rest should fall.

The subsidiary purposes of the act are, (1) to authorize the Court of Claims, in case fraud should be found, to enter a decree debarring and foreclosing appellant and its assigns from participation in the money in hand; (2) to authorize the Court of Claims to deal with the case in all respects as a court of equity; (3) to *authorize* the President, in case fraud is found, to return to Mexico the whole or a part of the money, as the case may be; and (4) to prohibit the Secretary of State from making further payments out of the fund during the pendency of

this suit, and in case fraud is disproved to distribute the whole or a part of the fund, as the case may be, to the persons entitled.

That all these purposes may fail without defeating the main purpose of the act would seem clear—indeed, too clear for serious argument.

The principal cases in this court on the subject, in addition to that above cited, are *Reagan* v. *Farmers' Loan and Trust Co.* (154 U. S., 362, 395, 396); *Field* v. *Clark* (143 U. S., 649, 695, 696); *Baldwin* v. *Franks* (120 U. S., 679); *Huntington* v. *Worthen* (ib., 97); *The Virginia Coupon Cases* (114 U. S., 270, 304, 305); *Trade-mark Cases* (100 U. S., 82).

THE ACT OF DECEMBER 28, 1892, WAS APPROVED IN A CONSTITUTIONAL WAY.

The constitutionality of this act is impeached on the ground that, at the time of its approval by the President, Congress had adjourned for the usual Christmas recess.

The facts on which the objection is based are as follows: The bill originated in the Senate and passed the House of Representatives on December 14, 1892. On December 15 it was signed by the Speaker and the President of the Senate. On December 20 the bill was laid before the President. As say the Court of Claims, "the ten days (Sundays excepted) within which he might sign or return it to Congress, therefore, expired on the 31st of December."

While the bill was in the President's hands Congress adjourned for the holidays. The joint resolution of adjournment is as follows:

> *Resolved by the House of Representatives (the Senate concurring)*, That when the two Houses adjourn on Thursday, December twenty-second, they will stand adjourned until Wednesday, January fourth, eighteen hundred and ninety-three. (Cong. Rec., Vol. 24, 52 Cong., 2 sess.)

On December 28, 1892, the President signed the bill, neither of the Houses of Congress being in session.

The question raised on this state of facts is not whether a bill presented to the President during the session of the Congress that passed it and approved by him within ten days after such presentation but after such Congress had dissolved its organization by an adjournment *sine die* became a law, but whether a bill presented to the President during the session of the Congress that passed it and approved by him within ten days after such presentation but during a recess of such session and while the organization of Congress still existed became a law.

A majority of the Court of Claims seems to have considered both of these questions as substantially one and the same. The Chief Justice, however, took a different view, regarding them as essentially different. He concurred in the judgment, on the ground that the approval of a bill by the President in a recess of the session of the Congress that passed it was valid under the Constitution, but

expressly declined to acquiesce in the proposition laid down by the majority, that the adjournment of a session of Congress has no effect on the power of the President to approve bills passed at such session and duly presented to him.

It will be found, we think, that this view simplifies the case and divests it of difficulty.

The Constitution (Art. 1, sec. 7) provides as follows:

> Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. * * * If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, IN WHICH CASE IT SHALL NOT BE A LAW.

The bill, in this case, was duly presented to the President on December 20, 1892, two days before the adjournment of Congress for the recess.

It was approved December 28, 1892, eight days after presentation; but this, it is said, had no legal effect and was no official act, because at the time the President set his hand to the bill the Congress was taking a recess.

If this position is sound, it follows that Congress cannot adjourn for a day, out of respect to a deceased Member, we will suppose, without rendering nugatory bills awaiting action in the President's

hands, where the last day on which he might act falls within the period covered by the adjournment.

The fallacy at the bottom of this position seems to lie in confounding the *session* of Congress with its *actual sitting;* in other words, in confounding an adjournment *that puts an end to Congress as an organized body,* and an adjournment that merely suspends its actual sitting, *leaving its organization intact.* In the former case, the return of a bill by the President, with his objections, would be vain for the want of a Congress to receive and act on them, while in the latter it would not be.

The Constitution furnishes an instructive analogy in the provision that in case the President disapproves of a bill he shall return it to the House where it originated. Has anyone ever contended that such return, when made on the last day of the ten-day limit, is rendered inoperative and the bill stricken with nullity if the particular House happened not to be actually sitting when such return was made? Manifestly the Constitution did not contemplate that such House should be able, by design or accident, to frustrate the President's action in this way by adjournment, and we may reasonably conclude that if the framers of the instrument had so intended they would have provided for the case by declaring that if the return of a bill by the President should be prevented by the adjournment of the House in which it originated such

bill "shall not be a law." The fact that they did not so declare must be taken as showing that no such provision was necessary, for the reason that neither House could, by its independent action, terminate a session of Congress, and so prevent the President's return of a bill.

By a parity of reasoning, why should the failure of Congress to be actually sitting on the last, or other day, or days of the ten-day limit, have any effect on the power of the President to approve or disapprove of a bill? provided such failure to sit was not the result of an adjournment which dissolved the organization of the body. In such a case, it can not be said that Congress has *prevented the return of any bill in the President's hands by adjournment*—in other words, that the President can not state objections because there is no public body in existence to which they can be submitted.

Following now the well-known rule of construction, that where a constitution or a statute admits of two meanings, one of which is productive of public inconvenience and the other not, the latter should be adopted, it would seem proper to conclude that the adjournment of Congress spoken of in the Constitution as preventing the President's return of a bill within the ten-day limit is an adjournment that puts an end to a session of Congress, and not to one which merely suspends the actual sitting of a Congress that continues to exist.

In 1864 the supreme court of New Hampshire had before it the identical question now presented, upon a case submitted for opinion by the legislature. The constitution of the State is the same as that of the United States, in the particulars under consideration, except that it limits the executive to five days in which to return a bill instead of ten, as in the latter.

The bill in question in that case, originating in the House of Representatives had been presented to the governor on Wednesday, August 17. The 21st of August falling upon Sunday, it resulted that the governor had the whole of Monday, August 22, upon which to return the bill, the day of presentation being *included*, the court held, in the computation. But the House of Representatives was not in session on that day, because on the preceding Saturday, August 20, both houses adjourned to Tuesday, August 23. The governor returned the bill with his objections on Wednesday, August 24. The court held, in an able opinion, that the governor had retained the bill one day beyond the constitutional limit of five days, and consequently that it had become a law. The following extract from the opinion fully supports the government's contention here, that the act of December 28, 1892, is a constitutional law:

> **The adjournment referred to in this provision of the constitution is not, we think, the ordinary recess or adjournment from time to time during the continuance of the session, but**

the final adjournment at the close of the session. In fact, this is the only adjournment, we think, which could prevent a return of the bill within the time limited. If we are right in the views expressed upon the first point, viz, that it might be sufficient for the governor to return the bill, etc., to the speaker after the adjournment of the house for that day, if within the five days, then it follows, of course, that the house could not prevent the return of a bill by adjourning over any one of the five days, even though it should be the last one of the five, because the bill might in that case be returned, within the time limited, to the speaker, or to the clerk, or some other proper officer. But when a final adjournment of the legislature for the session occurs before the expiration of the five days, then the bill can not be returned, nor could the two houses act upon it if it could be then returned. In the case before us, it is clear, we think, that the return was not prevented by the adjournment in question any more than it might have been by the adjournment from day to day. (45 N. H., 610.)

An analogous point was decided in the case of *Harpending* v. *Haight* (39 Cal., 189), which arose under the constitution of California, which, as to the point under discussion, is substantially the same as the Federal Constitution. In that case the bill was presented to the governor on Saturday, March 19, 1870, and on the tenth secular day thereafter, namely, on March 31, at 4 p. m., the governor, intending to return the bill, with his objections, to the senate, where it originated, delivered the same to his messenger for that purpose. The messenger, on arriving at the senate chamber, found that the body had adjourned. He did not leave either of the documents with any officer of the Senate, but at once returned with them to the governor.

On April 1, he communicated these facts to the Senate in a special message, and informed that body

that the bill had consequently failed to become a law.

Accordingly a mandamus was applied for to compel the governor to cause the bill to be authenticated as provided for by section 2 of an act entitled "An act for the authentication of statutes without the approval of the governor."

The court, being of opinion that the senate, by adjourning on March 31, had not prevented the governor from returning the bill in question, with his objections, and consequently that the bill had become a law by the failure of the governor to return it with his objections within the limit of ten days, awarded the mandamus as prayed.

In discussing the adjournment of the senate in its relation to the governor's action the court say:

> Now, if the mere fact of the recess of the senate, thus constitutionally taken, does operate to defeat, in a measure, the exercise of the veto power conferred on the executive by the constitution, then we have the strange spectacle of an irreconcilable conflict between the several clauses of that instrument itself, by which the senate, by the mere exercise of its own admitted constitutional authority to adjourn, violates the equally clear constitutional right of the executive to have it kept in session.
>
> We are of opinion that the adjournment of the senate on March 31 did not curtail the veto power of the executive over the bill in question, nor should it even have embarrassed him in its exercise. The return should have been made in such manner as the circumstances would permit; it should, at all events, have left the bill and message beyond the executive control, and, if need be, in the immediate custody of some proper person, who would be likely to deliver it to the Senate at the first opportunity. The best return that the circumstances would admit would, in our judgment, be a proper return. The maxim *lex non cogit ad impossibilia* would be applicable to such a condition of affairs. We know of no other rule, either, upon which

the clear right of the governor to make the return to the senate can be reconciled with the equally clear right of the senate to be in recess at the time.

In considering the meaning of the term "adjournment," as used in the provision of the State constitution which declares that a bill not returned within the ten-day limit shall become a law "unless the legislature, *by adjournment*, prevent such return," the court say:

> Having reached the conclusion that the facts do not show that the governor returned the bill to the senate within the meaning of the constitution, we proceed to inquire whether "the *legislature, by adjournment*," prevented such return; for, if it did, the bill could not become a law by reason of the failure of the governor to return it within the ten days. We judicially know, and, if we did not, we are distinctly informed by the agreed statement of facts, that the late session commenced on Monday, the 6th day of December, 1869, and terminated on the 4th day of April, 1870. The adjournment of the 4th day of April was, in our opinion, the only adjournment which could have prevented the executive from making the required return within the prescribed time.
>
> This results necessarily from the views we have expressed on the other proposition, in which we hold that the executive may return a bill to the senate, though it be not, at the moment of the return, in actual session. If it has adjourned for the day, or for three days, it still has an organized existence as a legislative body, with its president, secretary and other officers, to whom, under such circumstances, a substitutional delivery of the bill and message might be made, and whose official duty it would be to place the bill and message before the senate at as early a time as might be thereafter. Such a return, as we have said, would be the only one permitted by the circumstances, and when the bill should afterward actually reach the senate, it could then proceed to reconsider it, as required by the constitution in that respect.
>
> But when a final adjournment of the legislature has occurred, there is an end to the organized existence of the senate. It has no longer officers to represent it for any purpose; nor could the bill, in the nature of things, ever be brought to its attention, for it would not be in session thereafter, nor be reconsidered by it, which is the purpose to be attained, for it would be itself no longer existing.

As either House of Congress can perform its legislative functions while the other is in recess, so there is no apparent reason why the Executive should not perform its functions with reference to legislation while both Houses of Congress are in recess. If not, then it results that, if at the time the Executive approves a bill the Houses of Congress are not actually sitting, the act of the Executive is a nullity, which looks like an absurdity.

But it is urged that the President is a part of the legislative power and that "this power is a *unit*, though distributed;" that "the parts can only act in unison;" that "whenever a part ceases to act, the whole becomes inoperative;" that the Executive act owes its validity to the existence of the legislative body," and that "upon the adjournment of that body the power ceases, and all acts of a legislative nature are void." These positions are supported by the cases of *Fowler* v. *Pierce* (2 Cal., 165), and *Hardee* v. *Gibbs* (50 Miss., 802), and are supposed to be authority for the contention that the approval of the act in controversy here is without constitutional sanction.

An examination of the cases cited, however, shows that they refer entirely to the performance by the executive of the act of approval after the *final* adjournment of the legislature, and have no application to a case like the present. Indeed, those cases are

indirect authority for the position here taken by the Government.

As the approval of the bill in this case was during a recess of Congress, and while the body was in session, it is unnecessary to notice the doctrine laid down in those cases, that the Executive is a branch of the legislative power.

The view above presented is confirmed by the long practice of the Federal Executive, during which many public and private bills have become laws, in the same way as the act now in question, by approval during the holiday recess of Congress. We give, in Appendix B, a list of these acts, reaching as far back as the recess of 1862, and embracing important legislation. Thus, to select some instances from the list, the act "for the admission of the State of West Virginia into the Union, and for other purposes," was approved December 31, 1862 (12 Stat., 633), during a recess extending from December 23, 1862, to January 5, 1863 (Cong. Globe, Thirty-seventh Congress, third session, pt. 1, p. 64); the act making appropriations for extraordinary expenses of the naval service (18 Stat., 1), amounting in all to $4,000,000, was approved on December 31, 1873, during a recess extending from December 19, 1873, to January 4, 1874 (Cong. Rec., Forty-third Congress, first session, pt. 1, p. 352); the act extending the duration of the court of commissioners of Alabama claims (19 Stat., 1) was approved on December 24, 1875, dur-

ing a recess extending from December 20, 1875, to January 5, 1876 (Cong. Rec., Forty-fourth Congress, first session, pt. 1, p. 250), and the joint resolution making an appropriation for the purpose of paying the necessary expenses incurred in investigating the origin and cause of epidemic diseases in the United States (20 Stat., 487) was approved on December 21, 1878, during a recess extending from December 20, 1878, to January 7, 1879 (Cong. Rec., Forty-fifth Congress, third session, pt 1, p. 340).

This practical construction of the Constitution by the Executive Department, as to a matter within its province, will, we presume, be considered conclusive, according to an established rule repeatedly recognized by this court (*The Laura*, 114 U. S., 411 and cases there cited), and strongly emphasized by the supreme court of Georgia in *Solomon* v. *Commissioners* (41 Ga., 157).

Added to this is the distinct recognition by Congress of the validity of the act of December 28, 1892, in the following provision, to be found in two general deficiency acts (29 Stat., 296, ch. 673, and Pamphlet Laws of second session, Fifty-fifth Congress, ch. 571, p. 679):

> Suits against Benjamin Weil and La Abra Mining Company: For fees and expenses in suits of the United States against Benjamin Weil and others, and the same against La Abra Silver Mining Company and others, the said suits having been brought in obedience to the two acts of Congress, approved, respectively, on December twenty-eighth, eighteen hundred and ninety-two, and entitled "An act to amend and enlarge the act approved

June eighteenth, eighteen hundred and seventy-eight, entitled 'An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the fourth day of July, eighteen hundred and sixty-eight,'" ten thousand dollars.

We repeat that we do not deem it necessary to follow the court below in its able and instructive discussion of the question whether the President has power, under the Constitution, to approve a bill after the termination, by adjournment, of the session of Congress at which it was passed.*

There is a contrariety of opinion on the subject, but the weight of the argument appears to be on the side of the power. Indeed, the reasoning of this court in passing on the constitution of Illinois in *The Town of Seven Hickory* v. *Ellery* (103 U. S., 423) seems to necessitate the conclusion that, under the Constitution of the United States, the President may approve a bill after the final adjournment of Congress, provided he does so within ten days after its presentation to him.

In the leading case of *The People* v. *Bowen* (21 N. Y., 517) the power was sustained, with great force of reasoning, in a controversy arising under the constitution of New York, which, in the particular under discussion, is identical with the Federal Con-

*NOTE.—The opinion containing this discussion was delivered by Judge Nott, and evoked strong expressions of assent from the late Mr. Justice Strong, then in retirement, and from the late Judge Thomas M. Cooley. (See their letters, 29 Ct. Clms., pp. 537 and 546.)

stitution. This case, together with the cases of *State* v. *Fagan* (*infra*) and *Solomon* v. *Commissioners* (*supra*), is affirmed by this court in *Seven Hickory* v. *Ellery* (*supra*).

In *Lankford et al.* v. *County Commissioners* (73 Md., 105) the court of appeals of Maryland vindicated the power under the constitution of that State, which is, in this respect, substantially the same as the Federal Constitution. In his opinion, Chief Justice Alvey, speaking for the court, places much reliance on the reasoning of this court in *The Town of Seven Hickory* v. *Ellery* (*supra*). He also satisfactorily accounts for the practice of the Federal Executive to approve bills before the termination of the session of Congress at which they were passed, by showing that it has its source in certain joint rules of the two Houses, and not in the Constitution of the United States (p. 115). It is unnecessary to add that these joint rules can not restrict the constitutional authority of the President.

Reference is also made to *State* v. *Fagan* (22 La. An., 545), and *City of Detroit* v. *Chapin* (108 Mich., 136).

We must not omit to allude to the precedent established by President Lincoln, in 1863, by approving the captured and abandoned property act after the dissolution, by adjournment, of the session at which it was passed—every detail and argument

relating to which is presented in the learned opinion of the court below.

It is true that the House Judiciary Committee was directed to investigate the manner of the approval, and reported against its constitutionality; but the fact remains that the House failed to follow up the report of its committee, and that this court never declined jurisdiction under the act in the many cases that from time to time came before it, as it might have been its duty to do, *suâ sponte*, if the act had no legal existence. This court never moves until it feels a firm jurisdiction under its feet, nor does it wait for the bar to point out the absence of jurisdiction in a particular case.

All this is very strong to show that the deliberate judgment of the other two departments of the Government has been on the side of the Executive in this matter.

IT IS NOT MAINTAINABLE THAT CONGRESS CAN NOT DEVOLVE ON THE COURT OF CLAIMS, WITH ITS CONSENT, ANY FUNCTION NOT COVERED BY THE JUDICIAL POWER OF THE CONSTITUTION.

The undersigned, in his brief *In re Sanborn* (148 U. S., 222), argued as follows in support of this proposition:

> It is too late now to question the power of Congress to refer cases or authorize them to be referred to the Court of Claims to be dealt with outside of the judicial power. In such instances

the court is named merely as a way of designating its members as the particular officers or persons who are called on to assist Congress or one of its branches, or, it may be, some committee of either House.

The action of Congress in this respect has been so often taken, that, as the Chief Justice seems to intimate in *The United States* v. *Ferreira* (13 How., 52), it is too late now to question the power to take it.

In *The United States* v. *Anderson* (9 Wall., 56, 72), this court refused to hold that Congress intended to make the Court of Claims "a mere commission" for cases arising under the captured and abandoned property act, "*in the absence of an express declaration to that effect.*" This case was decided in 1869, and, consequently, after the Court of Claims was made the depository of part of the judicial power under the Constitution, by the act of March 17, 1866. (14 Stat., 9.)

The Supreme Court does not intimate, in the case cited, that it would have been beyond the competency of Congress to make the Court of Claims a commission to investigate and report upon claims under the captured and abandoned property acts. As in that case, so in all cases of legislation with reference to the jurisdiction of the Court of Claims, the question is whether Congress intended the court to act under the judicial power or not.

It is, furthermore, almost admitted by the court in the case of *The United States* v. *Ferreira* (*supra*) that the court or judge, the character of whose action was there in question, validly performed a nonjudicial function, and *Hayburn's Case* (2 Dall., 409) is cited in support of that view.

It is unnecessary to inquire whether nonjudicial functions can be *forced* upon the Court of Claims, as the judges of that court raised no objection whatever to investigating and reporting upon Mr. Sanborn's claim.

In denying the right of appeal in that case the court use the following language: "We regard the function of the Court of Claims, in such a case, as *ancillary and advisory only*" (p. 226, *italic our own*).

In *Gordon* v. *United States* (117 U. S., 697), Chief Justice Taney, in his "last judicial utterance," fully

sanctions the position for which we are now contending. He says:

> It will be seen by the sections above quoted that the claimant whose claim has been allowed by the Court of Claims, or upon appeal by the Supreme Court, is to be paid out of any general appropriation made by law for the payment and satisfaction of private claims: but no payment of any such claim is to be made until the claim allowed has been estimated for by the Secretary of the Treasury, and Congress, upon such estimate, shall make an appropriation for its payment. Neither the Court of Claims nor the Supreme Court can do anything more than certify their opinion to the Secretary of the Treasury, and it depends upon him, in the first place, to decide whether he will include it in his estimates of private claims, and if he should decide in favor of the claimant, it will then rest with Congress to determine whether they will or will not make an appropriation for its payment. Neither court can by any process enforce its judgment; and whether it is paid or not, does not depend on the decision of either court, but upon the future action of the Secretary of the Treasury, and of Congress.
>
> *So far as the Court of Claims is concerned we see no objection to the provisions of this law. Congress may undoubtedly establish tribunals with special powers to examine testimony and decide, in the first instance, upon the validity and justice of any claim for money against the United States*, subject to the supervision and control of Congress, or a head of any of the Executive Departments. *In this respect the authority of the Court of Claims is like to that of an auditor or comptroller*—with this difference only; that in the latter case the appropriation is made in advance, upon estimates, furnished by the different Executive Departments, of their probable expenses during the ensuing year; and the validity of the claim is decided by the officer appointed by law for that purpose, and the money paid out of the appropriation afterwards made. In the case before us the validity of the claim is to be first decided, and the appropriation made afterwards. *But in principle there is no difference between these two special jurisdictions created by acts of Congress for special purposes, and neither of them possesses judicial power in the sense in which those words are used in the Constitution. The circumstance that one is called a court and its decisions called judgments can not alter its character nor enlarge its power.*

II.

IF THE FUNCTION DEVOLVED ON THE COURT OF CLAIMS BY THE ACT OF 1892 WAS NOT WITHIN THE JUDICIAL POWER, IT FOLLOWS THAT THIS APPEAL MUST FAIL ON THAT GROUND ALONE.

In support of this proposition it is only necessary to refer to the cases of *Gordon* v. *United States* and *In re Sanborn* (*supra*), which lay down that this court will not review a case that does not fall within the judicial power of the Constitution.

III.

UNDER THE ACT OF DECEMBER 28, 1892, THERE IS NO APPEAL TO THIS COURT ON THE FACTS.

It seems to be a misconception that the act under which this suit was brought casts upon this court, on appeal, the onerous duty of investigating *de novo* the mass of conflicting evidence in the record for the purpose of determining the mere question of fact whether the award made by the Joint Commission was procured by the appellant, its agents, attorneys, or assigns, by "fraud effectuated by means of false swearing or other false and fraudulent practices."

We shall attempt to show that Congress did not intend anything so unreasonable and so obstructive to the other business of this court, having provided for a trial of the facts by the high court to whose findings of fact, under its general jurisdiction, the

United States submits *as final, no matter how important the subject in controversy may be.*

The act of December 28, 1892 (see Appendix A), authorizes and directs (sec. 1) the Attorney-General—

> to bring a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award or any part thereof in this act mentioned, to determine whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns. * * *

The act then proceeds (sec. 2) to confer jurisdiction on the Court of Claims, as follows:

> That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said Mixed Commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

Section 3 is the provision under which this appeal was taken, and is as follows:

> That an appeal from any final decision in such cause to the Supreme Court of the United States may be taken by either party *within ninety days* from the rendition of such final decree, *under the rules of practice which govern appeals from said court;* and the Supreme Court of the United States is hereby authorized to take jurisdiction thereof and decide the same.

To contend that the appeal provided for in the section just quoted entitles appellants to a hearing *de novo* on the facts, as in equity causes generally, is to ignore and strike from the section its requirement that the appeal provided for shall be taken "*under the rules of practice which govern appeals from said Court* [*of Claims*]."

The rules here referred to are those prescribed by this court, under the authority of the act of March 3, 1863 (sec. 708, R. S.), which provides that appeals may be taken from the Court of Claims, *under such regulations as this court may direct.*

In the first rule regulating the subject, this court directs as follows:

> In all cases hereafter decided in the Court of Claims in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court *upon the following record, and none other:*
>
> 1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.
>
> 2. *A finding by the Court of Claims of the facts in the case established by the evidence in the nature of a special verdict, but not the evidence establishing them;* and a separate statement of the conclusions of law upon said facts, upon which the court found its judgment or decree. *The finding of facts and conclusions of law to be certified to this court as a part of the record.*

If now the words of the statute are to have effect, how can there be a hearing *de novo* on the facts? How can there be *any hearing at all* on the merits in the absence of a finding of facts in the nature of a special verdict? The rule is peremptory that appeals shall be heard on records as prescribed by it,

and "NONE OTHER," and the statute, by adopting the rule, has withdrawn from this court all control over it, so far as this case is concerned.

If Congress had intended that this court should be involved in a tedious investigation of the confused, conflicting, and voluminous evidence in this case, it would seem impossible to believe that the act would have provided that an appeal in the case should be subject to the rules of practice governing appeals from the Court of Claims.

When we consider that the questions of fact involved in this case had been before Congress for over ten years, perplexing that body and consuming a vast amount of time, it is hardly probable that Congress was so indifferent to the public interests as to require this court to review on the facts the final decision the Court of Claims was to render in the case.

What such a review means is indicated in the opinion below on the merits, where the court speaks of the impossibility of dealing "in detail with the testimony" and of its extraordinary volume. The brief in support of the motion in this case at the last term, "that the objections to the jurisdictional act be first heard and determined," also foreshadows the severity of the labor involved in a hearing on the facts where it says that "much time and attention will be required for a proper discussion and

consideration of the questions of fact and law involved in the case," and that a hearing on the merits will be "*long and laborious.*"

It is conceded that there is no finding of facts by the court below, nor is it pretended that appellant asked for any such finding, so that there has been an entire failure on the part of appellant to observe the requirements of this court in rules 4 and 5, regulating appeals from the Court of Claims, which are as follows:

RULE 4.

> In all cases in which either party is entitled to appeal to the Supreme Court, the Court of Claims shall *make and file their finding* of facts, and their conclusions of law therein, in open court, *before or at the time they enter their judgment in the case.*

RULE 5.

> In every such case, each party, at such time *before trial* and in such form as the court may prescribe, shall submit to it *a request to find all the facts which the party considers proven and deems material to the due presentation of the case in the finding of facts.*

Outside of the questions of law arising upon the act of 1892, under which this suit was brought, *nothing remains* for determination but the statutory issue:

> Whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns. * * *

This case bears no resemblance to the case of

Harvey v. *United States* (105 U. S., 671), where this court held that the special act of Congress under which the suit was brought conferred equity jurisdiction on the Court of Claims, and that, on appeal, this court must determine the facts as well as the law applicable thereto.

In that case, it will be observed, the special act in conferring jurisdiction on the Court of Claims to proceed "*as a court of equity jurisdiction*," and, if need be, to reform the contracts in question, and render the proper relief, did not use any language indicating that an appeal in the case to this court should be conducted on rules of procedure different from those applicable to cases in equity generally. (See the act, 19 Stat., 490, c. 279.) And the same may be said of the case of *United States* v. *Old Settlers* (148 U. S., 427, 464), where this court reviewed the facts on appeal. Congress in that case gave the Court of Claims "*unrestricted latitude*" in determining the matters submitted to its jurisdiction, and this court reached the conclusion that it was intended that its jurisdiction on appeal should extend to an examination of the entire case, *de novo*.

But the difference between those cases and the one at bar consists in the absence from the former of anything in the respective jurisdictional acts to show a purpose to put restrictions on the appellate power of this court, sitting as a court of equity. The inference drawn in the cases of Harvey and

The Old Settlers, as to the scope of this court's appellate jurisdiction, is made impossible in the case at bar by the statutory command that the appeal allowed to either party shall be "*under the rules of practice which govern appeals from said Court* [*of Claims*]."

Never did a piece of legislation receive closer scrutiny or more anxious consideration than the act conferring jurisdiction in this case. Every word of it was pondered, and therefore should have its *full effect*, or, as Dodderidge, J., once said, expressing the same idea, "*Every string ought to give its sound.*"

The assumption that this is a suit in equity, in the technical sense, seems gratuitous. The act does not so denominate it. The Attorney-General is merely "authorized and directed to bring *a suit or suits* in the name of the United States."

It is true that fraud is cognizable in equity, but it is also cognizable at law; there being a concurrence of jurisdiction on the subject between courts of law and of equity. Nor was there any reason, growing merely out of the complicated inquiry involved, for investing the Court of Claims with jurisdiction in equity, because the methods of investigation used in that court are *precisely the same as those employed in courts of equity.*

It is true that the act (sec. 2) authorizes the Court of Claims to make "all interlocutory and final decrees" "according to the principles of equity and

justice," and "to enforce the same by injunction or any proper final process," and "in all respects to proceed in said cause *according to law and the rules of said court*, so far as the same are applicable."

Nor is it overlooked that section 5 contains the following provision:

> And in case it shall be finally adjudged in said cause either in the Court of Claims *or in the Supreme Court of the United States* that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, or any definable and severable part thereof, *was not obtained through fraud as aforesaid*, then the Secretary of State shall proceed to distribute so much of the said award as shall be found not so obtained through fraud, or the proceeds thereof remaining for distribution, if any, to the persons entitled thereto.

But this does not necessitate the inference that the adjudication by this court referred to should involve an investigation into the evidence, for it is plain that questions of law might arise on findings of the Court of Claims, such as how far the appellant, as a body corporate, was to be affected by the frauds of its officers and agents, the determination of which would be an adjudication that appellant had or had not used fraud in obtaining the award in question.

There is clearly nothing in this language of section 5 that would warrant the court in refusing to give effect to the requirement of section 3 that an appeal taken under that section must be "under the rules of practice which govern appeals from said Court [of Claims]."

In framing section 3 Congress was exclusively occupied with the subject of appeals, and nothing said in other sections, as to other matters, should be construed to overrule, by implication, the express words of the third section.

But when it is considered that Congress was dealing with an almost unprecedented case, which had baffled the executive and legislative departments of the Government, and was finally to be subjected to the judicial power of the Constitution, it seems clear that Congress did not have its attention fixed on any particular description of courts known to our judicature, but intended to create a jurisdiction *sui generis* and fitted to the extraordinary case before it, regardless of the ordinary landmarks of jurisdiction.

If Congress had proposed to make the Court of Claims a court of equity for the purposes of this case it would have so declared, as it did in the special act involved in the case of *Harvey* v. *United States* (*supra*). Nothing relating to jurisdiction would have been left to implication in a piece of legislation so intimately connected with the relations between the United States and a friendly power, and which, as a proposal, was violently assailed because, as alleged, it would, if it became a law, trench on the province of the Executive, violate international law, and trample under foot the principle of *res judicata*.

We submit, therefore, that this court has no jurisdiction to look into the facts on this appeal.

ARGUMENT ON THE FACTS.

Supposing now the act of 1892 to be sustained and the court to be of opinion that this appeal extends to the facts as well as the law, we proceed to discuss, in the light of the evidence, the great issue of fact formulated by the statute, namely: Whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company or its agents, attorneys, or assigns.

As appears by the aforegoing discussion, this suit is the outgrowth of a claim filed by the United States in the name of La Abra Silver Mining Company, a corporation of the State of New York, against the Republic of Mexico before the joint commission that sat under the treaty of July 4, 1868, between the United States and that Republic, having for its object the ascertainment and adjustment of claims of the citizens of each country against the Government of the other.

The Abra Silver Mining Company, as stated in its certificate of incorporation, was "formed for the

purpose of carrying on a part of its business in places out of the State of New York, which places are Tayoltita, in the State of Durango, and also the mineral district of San Dimas, both in Mexico; and the name of the town and county in the State of New York in which the principal part of the business of said company within said State is to be transacted is the city and county of New York." (P. 24.)

This company claimed the enormous sum of $3,000,030 for damages sustained, as alleged, by the hostile action of the Mexican authorities in expelling it from the country and forcibly appropriating its property.

The moralist and poet of Rome truly says: That punishment, moving with a hobbling gait, rarely fails to overtake crime, swift of foot; and this case exemplifies the truth.

The contrivers of this stupendous fraud omitted from their calculation a certain James Granger whom Exall, the company's superintendent and an arch conspirator here, put in charge of the mines when he left there for New York in March, 1868, in so-called flight; they failed to see that Granger's willingness to swear that he could not state the exact amount of money paid out by the company for improvements because "the hacienda has long since been *sacked of books, receipts, invoices, and other papers*, etc." (p. 50), when, at that very time, he had the books

and papers of the company in his possession, was no guaranty that his loyalty to the company and its crime would continue under the strain of neglect. Spurned and cast off by the company, which was considerably in arrears to him, he sought revenge and reparation by turning over to Mexico the prize of the books and papers which he and Exall had, up to that time, hidden and suppressed. (Pp. 289, 290.)

Of these books one is the letter-press copy book which was kept in the company's office at Tayoltita. It contains the invaluable evidence of the reports of the superintendents to the company, at New York, and other correspondence relating to its business; all written at or about the time of the occurrence of the matters therein mentioned, and before the existence of any motive to falsify, and covering the period of the alleged outrages suffered by the company, and all binding on the company as the statements and declaration of officers made in the course of its business.

As might be expected from its suppression, the matters detailed in this letter book are entirely irreconcilable with the testimony on which the claim rested before the joint commission and the umpire.

In addition to this documentary evidence, we have introduced several new witnesses of character and intelligence whose testimony gives further strength to the charge of fraud contained in the bill.

When therefore the truly meritorious defense of

Mexico had become obscured and discredited by the adverse decision of the umpire, it was a fortunate turn of events that placed in the hands of that Government this additional evidence, which completely overcame any presumption in favor of the award that might be insisted on, and showed still more satisfactorily that the United States had been made the means of enforcing upon a friendly power a claim of our citizens based upon fraud.

But, as clear as this evidence is, the United States has preferred that it should pass through the crucible of judicial scrutiny, in order that the action to be taken on the request made by the Government of Mexico might be characterized by the deliberation which its gravity demands.

Let us now proceed to examine and discuss the claim of La Abra Silver Mining Company, first with regard to its inherent improbability, and then as it appears in the light of both the old and the new evidence.

INHERENT IMPROBABILITY OF CLAIMANT'S CASE.

The celebrated Mr. Hume might have pronounced the claim of La Abra Silver Mining Company impossible, because contrary to experience and the accepted laws of conduct—the ordinary springs of human action. Certainly, no candid mind, whether of that philosopher's school or not, can fail to be impressed with its gross improbability.

What is that claim? It is said that in the year 1865, after peace had returned and when money could no longer be wrung from the distresses of the nation, certain New York capitalists, who afterwards became incorporated by the law of New York under the name of La Abra Silver Mining Company, and who had taken the prevailing fever for Mexican mining investments, proceeded to lay out a large sum of money in purchasing and developing a group of silver mines in that country, near Tayoltita, in the mining district of San Dimas, in the States of Durango and Sinaloa.

It is claimed that soon after this company began operations the Mexican military authorities commenced to despoil it of first one and then another of its loaded mule trains on their way to the mines from the seaport town of Mazatlan, on the Pacific coast, whence came all the company's supplies over a road 150 miles long and impracticable for vehicles of any kind.

It is claimed, furthermore, that the local authorities and the native population of the region of country where the mines are situated were hostile to and suspicious of all citizens of the United States, and especially so toward La Abra Company, which constantly suffered at their hands malicious interferences and annoyances that were a serious hindrance to its business, and that finally culminated in an outburst of open violence and lawlessness, before

which the company's superintendent, Charles H. Exall, fled for his life to Mazatlan, completely abandoning the mines and everything appertaining thereto.

It is alleged that these mines are unusually rich in silver, and would have readily yielded a million of dollars annually but for the persecution and violence the company had to contend against. At the same time it is alleged, with inexplicable inconsistency, that the company elected *to give up their ownership of the mines*, as valuable as they are alleged to be, and go before the commission with a mere speculative claim for their value.

It is also alleged that the mines were entirely abandoned by the company's superintendent in March, 1868, and that the company first brought its claim for damages against Mexico to the attention of the Government of the United States on March 17, 1870, *and after the joint commission was organized*, by a communication to the Hon. Hamilton Fish, Secretary of State. Up to that time the claim had not been brought to the attention of the Government of Mexico, either.

The amount of damages claimed in the letter of March 17, 1870, to Secretary Fish was $1,930,000, and the amount claimed in the memorial, filed on June 14, 1870, was $3,000,030, so that in less than three months the claim had grown by the amount of

$1,070,030. It was afterwards increased to $3,962,000, an addition of nearly a million of dollars.

Appealing, now, to experience as one of the tests by which the value of evidence is determined, we may ask, with some confidence, if it is not in the highest degree improbable that a company of Wall street capitalists, with a powerful government like the United States to back them, should have submitted to the robberies and outrages referred to, should have tamely bowed to the crowning outrage of their superintendent's violent expulsion from their property and his flight for his life, *without one word of complaint to Mexico or the United States*, until the letter to Secretary Fish of March 17, 1870, *written, we repeat, after the joint commission was organized?* Exall claims to have been driven from the mines in March, 1868, and yet this insult to the United States in the persons of its injured citizens, which, if properly brought to the attention of the people of the United States, would have been resented throughout the country, was kept from the public eye by these gentlemen in Wall street *for two years.* Is it credible that such an enormity, if it ever happened, could have eluded the vigilance of the press, or that these shrewd Wall street men would have failed to see the advantage of a prompt appeal to their Government for protection and redress?

This inaction on the part of the representatives of the company is the more remarkable in view

of the fact that on July 10, 1867, D. J. Garth, its treasurer, wrote to Exall, from New York, as follows:

> Don't run into debt or get into difficulty with the authorities, if there are any such things existing; but at the same time *be firm in maintaining your rights*, and don't submit to imposition except by force, *and then make a legal and formal protest as a citizen of the United States and as an American company duly organized and prosecuting a legitimate business under the protection of the law, and our rights will be protected by our Government.* (P. 285.)

And on August 10, 1867, Garth repeated these instructions in another letter. (P. 286.)

It is not pretended that a single written protest was made, in behalf of the company, to preserve the facts of any one of the outrages mentioned. Certainly we have a right to demand to know why it was that Exall did not obey his instructions and make such a protest, either at Mazatlan or San Francisco, after his pretended forcible expulsion from the mines. Not only did he omit to do so, but he actually failed to make any written report whatever to the company of the circumstances under which he was compelled to abandon its property and flee for his life. As a consequence, the president of the company, Mr. Collins, in his deposition in support of the claim, is compelled to make a statement which, coming from the head of a New York corporation, is simply incredible upon any rational theory of the honesty of the claim. He says:

> As to the circumstances causing and attending said abandonment, the situation and condition of said mines and property of

said company at that time, the quantity of silver ore which the company had then extracted at the mines, and its value and the quantity and value of silver ore which the said company could thereafter have extracted, deponent *has no knowledge, except what is derived from statements of others, and the depositions of others made in this matter, which deponent believes to be true.* (P. 39.)

Señor Avila, arguing to the umpire in support of the application by Mexico for a rehearing, thus comments on Exall's extraordinary conduct, supposing for the nonce his statements about the fate of the company in Mexico to be true:

It is said that the speculation was abandoned on March 20, 1868, and the first written report that the company ever received of the cause of the abandonment—this is at least the oldest date presented—was the affidavit of Charles H. Exall, produced in New York, December 20, 1869, one year and ten months after the abandonment had occurred.

It is said in this affidavit that it was determined upon by reason of the annoyances caused by the citizens, and by the civil and military authorities; these are mentioned in a way less vague than in the memorial, and the *imperial troops* are likewise designated as authors of the injuries; but not a word is said about the formalities and manner in which the abandonment was effected.

This same Exall in another affidavit in behalf of the company, *June* 11, 1874, says that his departure from the place of the mines was sudden and in secret, for fear of losing his life, because the day before Macario Olvera, the prefect, told him that it would be better for him to abandon the mines, as he, the prefect, was unable to defend the company against public sentiment, and that the Mexican residents of the district were determined *not to remain any longer out of work, etc.*

Let us suppose for a moment that all this was true; what would any man of common sense have done in Exall's place? What should any honest man, in charge of interests of such magnitude, have done?

Nobody evidently who considers himself worthy of this title would hesitate to answer that above all Exall should have consigned in a formal document the state in which those interests were left, and the cause that had determined him to abandon them; and supposing he was unable to find one single honest

man in the place he was about to leave, willing to authorize with his signature such a document, as soon as he reached some other place where his life was safe, his first care should have been to produce such a document.

Exall has not said where he did go to after leaving the mines, but the witness Antonio Peña, a resident of Mazatlan, said that he lent Exall there $250 to pay his passage to the United States, adding that he had not been reimbursed of that amount.

This proves three things: First, that the last superintendent to the mines after their abandonment, went to Mazatlan; second, that he then had no funds; and, third, that the funds of the company were also exhausted.

Now, what could have prevented Exall in Mazatlan to enter a protest or to produce such a document as we have been referring to?

All this is very improbable, and is rejected by common sense.

Let any honest man put himself in Exall's place and compare the course of action he would have followed, supposing true the inculpations made against the authorities of Mexico with that followed by Exall, who can by no means be considered an idiot, and the forcible conclusion can be no other than that there are no signs of truthfulness in the tardy story of the causes of the abandonment. (House Ex. Doc. No. 103, Forty-eighth Congress, first session, pp.88, 89.)

The learned counsel then makes the following reference to a case in point adjudged by the commission:

In the decision of case 994, "*W. L. Laird* v. *Mexico*," we read: "Nor is it to be believed that the claimant on his arrival to Matamoras should not have laid his complaint before the United States consul at that port." Why, then, should we believe that Exall should not have laid *his* complaint before the United States consul at Mazatlan? (*Ib.*, p. 105, note.)

Again, he says (*Ib.*, p. 105):

What we do find exaggerated, not to say preposterous, is the pretension that we should believe that the manager of such a large property should have abandoned it without being authorized to do so by its owners, and that a foreigner—and especially an American—entitled to the protection of his Government, should not apply for it before abandoning an enterprise in which there were millions in prospect, and in which hundreds of thousands of dollars had been spent.

In all the papers of the file the idea is repeated that the President of Mexico was very favorably disposed toward foreigners. If the subaltern authorities did not second that sentiment, what could have been more natural than to complain to the President of Mexico?

If the wrongs and injuries complained of had been actually committed, we must assume that the company would have been in possession of full documentary evidence to prove them, in the shape of the protests and reports of its superintendents in charge of the mines. The failure to produce such evidence or account for its absence throws a cloud of improbability and suspicion over the whole of the claimant's case which absolutely repels belief.

The following "beggarly account of empty boxes" was rendered by claimant in response to a notice in this suit to produce its books and the letters and correspondence of certain of its officers:

> Service of the above notice accepted this sixth day of June, 1894, and the above-named defendant says that neither it nor any of its present officers or agents have now or have had since the death of Mr. Worthington, former secretary of said company in the year 1871, or since his removal from New York a year or two previously, possession of any of the books (except its stock-certificate book) kept at its office in New York from the year 1865 to the year 1868, inclusive, or of any reports, letters, or correspondence addressed to its officers in New York within that time, and that neither the said company, its officers, or agents know the whereabouts of any such books, reports, letters, or correspondence, except said stock-certificate book.
>
> In regard to the books and records, letters, and correspondence of the company that were kept in its office at Tayoltita, defendant says that they were left at that place by the defendant's last superintendent (Exall) when he abandoned the defendant's property in February or March, 1868, and that since that time neither the defendant nor any of its officers or agents has had possession or control of such books or records, or any of them,

except the exhibits attached to Granger's deposition, taken on defendant's behalf May 14, 1870, and subsequently submitted to the United States and Mexican Claims Commission.

CRAMMOND KENNEDY,
Solr. for La Abra Silver Mining Company.

(P. 462.)

It is difficult for one accustomed to business methods to conceive why this president, Mr. Collins, did not require Exall, when he appeared before him in New York, fresh from the mines, with his dismal story on his lips, to make a sworn statement or formal protest of all the facts of his expulsion and flight, as he had been twice instructed to do by Treasurer Garth, if occasion should require. That he did not, is, we think, incompatible with the theory that the company conceived that it had a righteous claim against Mexico, for it is impossible to suppose that, in such a case, the company would not have looked forward to making a demand, through our Government, on that country for indemnity, as indicated by Treasurer Garth, in his letter to Exall of July 10, 1867, quoted above. We feel quite sure that the patience of the court will not be taxed by the monstrous contention that these Wall street capitalists would have treated with unconcern a loss involving a matter of nearly four millions of dollars, as it grew to be before the commission, if such a loss had occurred. *Actions speak louder than words*, and the language of their conduct, in the light of what Exall reported to them after his so-called flight, is conclusive that his story was that

the mining enterprise had proved a total failure from the worthlessness of the mines and the incompetency of those in charge of them, and not from the robberies and violence of the Mexican authorities.

This unexplained and apparently inexplicable inability of La Abra Company to furnish from its own records a detailed history of the outrages it claims to have suffered in Mexico is well calculated to provoke from this court the animadversion with which it was visited by the umpire, Sir Edward Thornton, and, beyond doubt, disentitles the company to any relaxation of the stringent rules of evidence. Indeed, the improbability that a company composed of Wall street capitalists, and embarked in so large an enterprise, could not have produced such evidence is so great as to justify the conclusion that it has been deliberately suppressed. And such a conclusion, bad as it is, seems absolutely established by the failure of the witness, Collins, who was made president of the company in 1866, and was both a considerable stockholder and a large creditor of the company, *to attempt to account, in any way, for the nonproduction or disappearance of the books, papers, letters, and records of the company's New York office.* It will be observed that when Collins became president the *company was in full operation.* He was, furthermore, a "wholesale tea merchant," and the impression is sought to be made that he was a good man of business; and yet, as

we have seen, he confesses that all his knowledge about the facts underlying this immense claim "*is derived from statements of others and the depositions of others made in this matter, which deponent believes to be true.*" (P. 39.) Of what value, we may ask, is evidence of character or church membership in the face of his silence as to the records, books, letters, and papers of the company? The eminence claimed for him as a man of business and piety makes this silence all the more damaging to the company and all the more difficult to comprehend. As a man of affairs, as a man of common sense, Collins knew the value of the records of the company. His failure to refer to them or account for their absence is strong to show fraud.

A bankrupt who had kept no regular books, and complained of the severity of an order of court requiring him to render a more satisfactory cash account, was thus rebuked by Sir George Jessel:

> I have often lamented that there is not a forensic term for impudence. If there was, I should apply it to this bankrupt. * * * He says that he never kept any books. What are we to say to a man carrying on this large business who kept no books? In France he would be subject to severe criminal proceedings for not keeping books. There is no such law in England. But though he escapes criminal proceedings he is not exempt from censure, and when he becomes bankrupt he must not expect to be treated in the same way as an ordinary business man who keeps books from which his creditors can ascertain the state of his affairs. The present bankrupt has no right to complain.
>
> Now, what does he say about his papers? He has no papers, no books of account no letters from his creditors or his debtors, nor any of the various other documents which he must have

possessed regarding the companies which he promoted, saving the sums which he received and paid. They are lost or destroyed. Not one of them is forthcoming, and he has neither a book nor a paper—nothing in the world except a few recent counterfoils and a bankers' pass book. (*Ex parte* Moire, 21, Ch. D., 63.)

There is small room for doubt that Sir George Jessel would have administered a similar rebuke to appellant if he had been a member of the commission that passed on this claim, for surely it was a case where the stern justice of that equity judge should have been applied with increased severity if anything. And during the investigation of the charges against La Abra by the Senate Foreign Relations Committee its chairman expressed himself in much the same strain as the judge. (S. Rep. No. 2705, App., p. 723.)

This failure of the company to produce in evidence the books and papers which must have been in its possession as indispensable business records, and which, according to Garth, were in its possession at the time the company filed its memorial in the commission (pp. 715, 716), is only explicable on the ground that they were *hidden or destroyed* to prevent their being used against the company before the commission.

The mere fact, therefore, that no officer of the company can tell what has become of the books, papers, and letters of its New York office is sufficient to condemn the claim, *in odium spoliatoris.*

But there is another improbable feature in the

case which calls for attention. It is claimed that the company's mines were rich in silver to an extraordinary degree, so much so, indeed, as to have attracted the special attention of Baron Humboldt and other celebrated explorers. But if it is true that these reports of the richness of the mines were borne out by the company's experience in working them, how is it to be explained that the company preferred to waive its rights as proprietor of the mines and ask, in their place, *the uncertainty of an award of damages?*

That the company claims to have taken this extraordinary course can not be doubted. In his second deposition, George C. Collins, then its president, says:

> Question 8. State whether or not said company, at the time they abandoned their said mines, hacienda, and property, in March, 1868, gave or put, or at any time since have given or put the same, or any of them into the charge, or under the control of any person, or authorized any person to do so, or in any way directed or authorized the same, or any part of them to be used, leased, sold, or otherwise disposed of? State fully and especially with reference to James Granger.
>
> Answer. The said company did not then, nor has it at any time since, placed their said mines, hacienda, and property, or any part of them in charge or under the control of James Granger, or of any other person, nor authorized him or any person to do so, nor directed or authorized him or any person to sell, lease, use, or in any way to dispose of said mines, hacienda, and property, or any part of them, and if he, or any other person has exercised any charge or control over them, or any disposition thereof, such acts were wholly without any authority from said company, or of any authorized agent or attorney of the company, and have never been ratified or recognized by said company, nor by any authorized agent or attorney of said company.
>
> Question 9. If said Charles H. Exall had attempted to confer

upon said Granger, or any other person, any such power of the charge, or control over, or disposition of said mines, hacienda, and property, or any part of the same, what authority had he, if any, from the company, or from any attorney or agent of the company, for so doing?

Answer. None whatever.

Question 10. What has become of said mines, hacienda, and property?

Answer. From copies of Mexican records shown me, it appears that the company's mine "Rosario" was denounced by said James Granger, April 8, 1871, and that he and a Mexican, named Francisco Torres, were put in possession of it by the legal authorities of the State of Durango, in Mexico, August 11, 1871, and I am informed and believe that the stamp mill and mining tools of said company have been all sold and leased out by the Mexican authorities of that district, and the same partially or wholly worn out by use at the works of Mexican miners; and also that the other mines, and the hacienda, and reduction works of La Abra Company have, since August, 1872, been denounced, and legal possession given of them by the Mexican authorities at Durango to the parties denouncing, and that the same are being worked by Mexicans successfully.

Question 11. State whether or not any person has accounted to said company for their said mines, hacienda, and property abandoned in March, 1868, or for any part thereof, subsequent to said abandonment, or has paid for the same, or paid anything on account of the same, or any part thereof?

Answer. No; no person has so accounted, or paid anything, for or on account of the same, or any part thereof. (Pp. 147, 148.)

In his first deposition Collins said:

Said company abandoned their said mines, works, silver ores extracted, and property, in March, 1868, the same at that time being under the charge, control, and supervision of Charles H. Exall, for said company. Upon said abandonment, and in consequence of it, the stock of said company became wholly valueless, and has so ever since remained, and the said company have wholly lost the moneys so expended and owing by said company and the profits which they would have realized from said expenditures. (P. 39.)

In his second deposition Exall is equally emphatic on this point, saying:

I did not leave said mines, hacienda, or property in charge of said Granger, or any other person, nor did I give any charge,

control, power, or authority of or over the same, or any part of the same, to him, or anyone else, and if he, or any other person has taken charge or control of said mines, hacienda, and property, or of any of it, or has sold, used, or in any way disposed of any of it, each of such acts was without any power or authority, or right whatever to do so, so far as any act by me or for me, or on my part, as superintendent or otherwise, is concerned. (P. 152).

If the company had been forcibly and lawlessly expelled from Mexico, its omission to work the mines under such circumstances could not have operated to its prejudice under the Mexican mining laws. Certainly the Government of the United States, if appealed to, would have resisted to the bitter end any attempt on the part of Mexico to forfeit the company's rights on the ground of a nonuser caused, as alleged, by the lawless acts of that Government itself.

It is absolutely incredible that the company should have waived such rights of property with the expectation of getting an award of damages equal to its estimate of their value, and as a substitute for them, because of the well-known element of uncertainty in the valuation of this kind of property, which renders the best attainable evidence in its support an unfit basis for judicial action. Consequently the arbitrator, Sir Edward Thornton, actually refused "*to make an award on account of the so-called value of the mines*," and gave the following reasons for the refusal:

Mining is proverbially the most uncertain of undertakings; mines of the very best reputation and character suddenly come

> to an end either from the exhaustion of the veins or from flooding or from some of the innumerable difficulties which cross the miner's path. A certain interest upon the money invested is a much surer compensation than prospective gains; the latter are, in fact, the interest upon the sums invested; they may be greater or less or none at all, and there may even be great losses of capital. To award both interest and prospective gains would be to award the same thing twice over. The so-called value of the mines must depend upon the prospective gains. It may be great, small, or nothing, and may be but a mere snare to lead one on to utter ruin. It is, in the opinion of the umpire, equally inadmissible that the Mexican Government can be called upon to pay a value the amount of which, even approximately, it is impossible to decide. (P. 9.)

And this court, in *Southern Development Co.* v. *Silva* (125 U. S., 247, 252), quotes with approval the following from the opinion of the Supreme Court of Illinois in *Tuck* v. *Downing* (76 Ill., 71, 94):

> No man, however scientific he may be, could certainly state how a mine, with the most flattering outcrop or blow-out, will finally turn out. It is to be fully tested and worked by men of skill and judgment. Mines are not purchased and sold on a warranty, but on the prospect. "The sight" determines the purchase. If very flattering, a party is willing to pay largely for the chance. There is no other sensible or known mode of selling this kind of property. It is, in the nature of the thing, utterly speculative, and every one knows the business is of the most fluctuating and hazardous character. How many mines have not sustained the hopes created by their outcrop?

The failure of the company, therefore, to call upon our Government to require Mexico to reinstate it in possession of the mines, if for no other reason than to enable it to sell them, can only be accounted for on the theory that the property was nearly, if not entirely, worthless, and had proved "a mere snare to lead one on to utter ruin," to borrow the words of the umpire.

If La Abra Company had set up a claim which could only be supported on the theory that there had been a suspension of the laws of matter, this court, if it consented to take cognizance of such a case, would demand the amount of proof necessary to substantiate a miraculous event. So here, as it seems to us, the court must require the claimant to show, by irresistible evidence, how it was that it pursued a course of conduct which was contrary to the principles of action that control men generally under similar circumstances. But the record contains no attempt even to explain the phenomenon.

Desperate indeed must be the situation of a case that can not be supported without sapping the stability of the laws of human conduct!

To disobey the teachings of experience in passing on evidence would be to disregard the only test of credibility, and often lead to the irresponsibility of courts for their decisions of questions of fact. It would be precisely as if courts of equity should decide upon their own notions of equity, or according to the length of the chancellor's foot, regardless of fixed principles. In both cases the result would be the destruction of "the security and the feeling of security which ought to be the principal end of political governments and law."

The supreme court of New Jersey present the

same idea in a striking manner in the case of *Daggers* v. *Van Dyck* (37 N. J. Eq. R., 132). They say:

> Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself—such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous, and is outside of judicial cognizance.

Mr. Starkie also says:

> Experience points out some laws of human conduct almost as general and constant in their operation as the mechanical laws of the material world themselves are. That a man will consult his own preservation, and serve his own interests; that he will prefer pleasure to pain, and gain to loss; that he will not commit a crime, or any other act manifestly tending to endanger his person or property, without a motive; and conversely, that if he has done such an act he had a motive for doing it, are principles of action and of conduct so clear that they may be properly regarded as axioms in the theory of evidence. (Evid., vol. 1, p. [487].)

It is manifest, therefore, that the claim can not stand when tried by the ordinary tests of credibility, there being no evidence to show a suspension of the laws of human conduct that operate upon men generally, supposing such evidence, if attainable, to be cognizable by courts of justice.

THE SUSPICIOUS GENERALITY OF THE MEMORIAL.

But, in addition to the improbability, not to say incredibility, of the claimant's case, the studied employment of generalities, as to the several grounds on which the claim rests, in the presentation of it in

the memorial before the commission, is more than suggestive of fraud.

A general mode of statement is the cloak of darkness in which fraud habitually clothes itself. The false witness, for example, is keenly alive to the fact that the exposure of his perjury is almost certain if he ventures into details, and, consequently, he is careful to avoid danger by feigning forgetfulness. It has been truly said that Providence has appointed this inattention to particulars "*as the snare for the false witness and the safeguard of innocence.*"

The frequently recurring *non mi recordo* (I do not remember) under which a certain Italian witness, produced against Queen Caroline on her trial before the House of Lords, took shelter when pressed for particulars on cross-examination, will not be forgotten so long as Mr. Brougham's speech in defense of his royal client continues to be regarded as a splendid example of forensic discussion.

The memorial alleges that the mines, at the time of their abandonment, were producing "a large amount of the richest ore" and were "in the act of realizing the extraordinary profit of a million of dollars per annum;" but, strangely enough, not a word is said as to when, where, and by whom the tests or assays were made on which these apparently extravagant statements were advanced.

It is said that the company was forced to abandon the mines "by reason of unfriendly and

illegal acts of the Mexican officials," and that "an intense prejudice was constantly manifested by the authorities, both civil and military, and by the Mexican populace, against all Americans, and especially against those engaged in mining, including said company;" but we are not informed as to the character of these "unfriendly and illegal acts," or as to who were the "Mexican officials" who committed them, or any of them, and are left in the same uncertainty as to the particular manifestations of the "intense prejudice" constantly shown by the authorities and the populace.

Was it enough to allege in the memorial that "the property of the company and the persons and the lives of the employees were threatened by the authorities and the people?" Would not an honest claimant have deemed it imperative to support so extraordinary a statement by giving some insight into the particular instances in which the Mexican authorities and people had been guilty of conduct that would have ill become savages?

How are we to account for the failure of the memorial to give the particulars of the seizures of the company's mule trains, loaded, as they are said to have been, with supplies for the mines? Is not such silence more than derogatory to the claimant's case? Is it likely that an honest claimant would have observed silence when called on to speak by the strong considerations of interest and fairness?

It must be admitted that the memorial does approach particularity in its reference to the personal difficulty that occurred between the superintendent of the company and the local judge, Perez, which, however, had nothing whatever to do with the mines or the company's business, but, *being an actual occurrence*, and serving, by distortion, to give some color to the case, though really an unimportant incident, the account of it in the memorial is inflamed and exaggerated by some small attention to detail. But, even in this particular, the memorial is suspiciously reticent, in not disclosing so important a circumstance as the name of the superintendent, Exall, who, it is claimed, was arrested, fined, and imprisoned without regard to law and *who was an active participant in the preparation of the case*—a fact which could not have been withheld for any other reason than that of *embarrassing Mexico in preparing her defense.*

The contrast, in this respect, between the particularity of this part of the memorial and the generalities of its other parts naturally suggests the question whether the contrast is owing to the presence of a modicum of truth in the former and its total absence from the latter.

Manifestly, the memorial filed by La Abra Company before the commission could not have been better adapted to its purpose if it had been drawn to facilitate perjury or avoid the danger of serious variance between it and the evidence to be fabri-

cated in its support, or to embarrass the Government of Mexico in preparing its defense.

It would be unreasonable to the last degree to suppose that the Government of Mexico, which, like other Governments, is incessantly occupied with what Lord Coke calls *ardua regni*, had any acquaintance with the facts of claimant's case, or that it could obtain acquaintance with that case except by investigation and inquiry, prosecuted in the light of the claimant's own statements in its memorial. The Government of Mexico had, therefore, the right to expect that those statements would be sufficiently particular to guide such investigation and inquiry, and when the commission saw how far short of this the memorial fell, it is respectfully submitted that it was its duty to dismiss the case upon the ground on which it condemned in part the presentation of the claim of the Arco Minco Mining Company, in which the American commissioner, delivering judgment, said:

> *The least* claimant should have done was to have stated *in the memorial* what taxes and forced loans were levied, on whom, and at what date, and what quantity and description of property, and the value thereof. This information we were entitled to have *in the printed statement of the case.*

If the umpire was correct in holding that the defense of Mexico had failed, which we are far from conceding, there can be no doubt that the prime cause of the failure was the inexcusable and pre-

meditated obscurity of the presentation of the case that Government had to meet.

Señor Avila, in his very able argument supporting the application of Mexico to the umpire for a rehearing, well and pertinently comments on the seriously defective statement of the claimant's case in the memorial. He says:

> Neither this commission nor any other municipal court can pass judgment on mere intentions or acts of the will, and they can only do it when facts are stated. If the persons invested with public authority in the district of San Dimas, actuated by fears more or less founded that the agents of the company were conspiring against the integrity of the Mexican territory, did not sympathize with them, this circumstance can not constitute of itself a good ground for a trial, so long as that want of sympathy did not pass into acts. * * *
>
> The charges of threats on the part of the authorities, acts of violence directed or stimulated by them, seizure of trains, assassination of one of the company's employees, and the purpose of expelling its agents from the country, made in a vague manner, without any precision as to dates, and without stating minutely the facts, are as deficient as the general imputations of hostilities, and of false imprisonment of the superintendent of the company, neglecting to give his name or any other data that could enable us to determine the event, and can not be esteemed a sufficient ground on which to base a claim.
>
> The American commissioner, of whom nothing could be said with less foundation than that he carried his exigencies too far when parties interested in claims *against* Mexico were involved, in delivering his opinion in the case of the "Arco Minco Mining Company," No. 937, and alluding to the requirements to be fulfilled in presenting claims before this commission, said:
>
> "*The least* claimant should have done was to have stated *in the memorial* what taxes and forced loans were levied, on whom, and at what date, and what quantity and description of property, and the value thereof. This information we were entitled to have *in the printed statement of the case.*"
>
> Had he acted in this case consistently with his theory, he would not have taken the claim of the Abra Company into consideration, because it is still more vague and indefinite than the Arco claim, in which, at least, it was stated that a body of Mexican troops camped near the mines and carried from them

powder, implements, etc. This is certainly more definite than the seizures of trains with provisions, without stating when and where they were made, and yet the commissioner deemed that inculpation to be an "*indefinite charge*," and refused to take it into consideration. (H. Ex. Doc. No. 103, 48 Cong., 1st sess., pp. 86, 87.)

EXALL'S TESTIMONY BEFORE COMMISSION SHOWS CLAIMANT'S BAD FAITH.

It was certainly to be expected that the evidence adduced before the commission in support of the claim would at least supply the details in which the memorial was wanting, especially as this evidence was taken without notice to the Government of Mexico, and, consequently, without cross-examination. Indeed, natural justice demanded that Mexico should have reasonably specific information from the evidence certainly, if not from the pleadings, of alleged grievances which were the foundation of a claim for nearly four millions of dollars.

But, so far from this being the case, the testimony before the commission in support of the claim, besides having been elicited in a large degree by a suggestive, leading course of interrogation that would have insured its rejection by any court having a proper regard for the established rules of procedure, is just as indefinite and unsatisfactory as the memorial itself, with the very suspicious exception of certain evidence introduced by way of rebuttal, which Mexico had no opportunity of meeting, un-

der the rules of the commission, and which was therefore *in no danger of contradiction.*

If the claim is an honest one, it was in a high degree incumbent on the claimant to see that its chief witness, Charles H. Exall, the superintendent *anonymously* referred to in the memorial, gave his testimony with such fairness and such particularity as to remove the perplexing uncertainty in which Mexico was left by the claimant's disregard of the rule of the commission, that every fact of a claim should be laid in the memorial with its appropriate time and place, and that "the *kind or kinds* and *amount* of property lost or injured" should be stated, together with "*the facts and circumstances attending the loss or injury out of which the claim arises, and all the facts upon which the claim is founded.*"

It was vital to the claimant's case, if founded in truth, that Exall, the chief actor in the drama, should be examined with care upon the details of the grievances which, *he alleges*, were heaped on him and eventually drove him from the company's mines a fugitive for his life, because it was manifest to any ordinary understanding that he was seriously, if not hopelessly, discredited already by the unexplained and, as it has turned out, inexplicable inconsistency between his conduct as La Abra's superintendent and his representations embodied in the company's memorial, in this, that, according to the established laws of human conduct,

if he, as custodian in Mexico of vast interests of American citizens, had been treated as he says he was by the authorities and people of Mexico he would certainly have gone before some American consular officer or notary public and made one or more formal protests in writing under oath of the facts and circumstances of the case; and would, furthermore, when he returned to New York a fugitive, have certainly submitted a written report to the company, setting forth everything connected with his forced abandonment of the mines, machinery, and movable property of the company, and his leaving the same, as he alleged, at the mercy of an infuriated populace urged on by the local authorities.

It was, therefore, vital to the credit of this witness that he should be required to testify with such attention to detail as would give Mexico a fair opportunity to test the value and integrity of his statements.

It reflects, then, most seriously on the claimant's case to find that its chief support before the commission, Exall's evidence, is couched in generalities in its material parts.

Let us now see how this witness tells the story of his and the company's persecutions and sufferings, in his own words, in his deposition in chief:

> The feeling and prejudice of the authorities, both military and civil, and of both the local and national authorities, at Tayoltita, and in the States of Durango and Sinaloa, were very inimical to us. It was currently reported by the Mexican au-

thorities and citizens, and we were accused of meanly coming there for the purpose of purloining the silver and gold of Mexico with which to enrich the United States, and finally of stealing the States of Durango and Sinaloa from Mexico, by annexation of the same to the United States, and this feeling and prejudice soon took an active hostile form, and our lives were threatened by both the citizens and the troops of the legitimate Government of Mexico under President Juarez, its present chief magistrate; those threats were frequently made, and we were in constant fear for our lives, and in pursuance of these threats, one of the employees working for said company, was actually killed while coming up from Mazatlan with a train of mules for said company, and we were finally driven off, and compelled to abandon our mining operations, by said authorities. The civil officers of the legitimate Government of Mexico under President Juarez also harassed and annoyed us, and interfered with the continuing of the mining operations of said company. I was arrested by the order of the local magistrate or judge of Tayoltita, whose official title, as I understood, was "Juez," and thrust into prison and sentenced by him to a fine of $50 and imprisonment for two months. I had no trial, nor even an examination, except by him personally, and do not know for what I was arrested or imprisoned; but I here state positively that I had not committed any act, crime, or offense against the laws or people of Mexico, or any citizen or soldier of the same, nor against any of the authorities, local or national. I was released through the personal influence of a Mr. Granger, who had to promise payment of the said fine: no good reason ever having been given me for my arrest or release. I had frequently applied to the proper military and civil authorities of Mexico, both in Sinaloa and Durango, for redress and protection against the violence stated, but was rudely denied by both in every case, and could get neither; and these threatened acts, and the acts of violence, were encouraged and connived at by said authorities, if not actually instigated by them, which last I believe to be the fact also. By reason of these facts it was very difficult to keep men there at work, and the prosecution of the work was greatly hindered and delayed, and it finally became utterly impossible to continue the mining operations of the company; and I was compelled, with my men, to give up the same entirely, and to abandon the mines and all the mining implements and property of the company, to save our lives. I can not state dates and names with any degree of certainty. Mexican names are hard for me to remember. The Imperialist soldiers, and citizens sympathizing with their cause, also threatened and interfered with us, for the reason, as they stated, that we were in sympathy with the legitimate Government of Mexico under President Juarez. Said interference

occurred at various times during the whole progress of the work while I was superintendent, and we were finally compelled to abandon the company's mines and property, about March twentieth, eighteen hundred and sixty-eight.

The military authorities of the Liberal Government of Mexico, or those acting in that capacity, seized upon our mule trains on the road from Mazatlan to our mines in the State of Durango, loaded down with provisions and stores for the use of the employees of said company, and they, the military, appropriated them to their own use, upon the plea that they were not provided for, and must have them as a military necessity.

Large numbers of our mules, and thousands of dollars' worth of our stores and provisions, were captured in this way by the said military, during the progress of the war there.

And finding it little or no better at the close of the hostilities, indeed it was even worse in the mines, for then they seemed to turn their whole attention to what they called a purpose on our part to annex Durango to the United States. And it was in vain that we protested that we had no such intention.

The report had become general, and we were so harassed that it was impossible to continue our work with safety, as I have before stated.

The military under Maximilian frequently captured our mules and stores in the same way, and shamefully abused our men, who were conducting the trains. They assigned as a reason for so doing that we, the said company, and its employees, were Republicans, and hostile to the interests of their so-called Imperial Government, which was true.

And so, between the two fires, we had no protection, neither of the contending parties respecting our rights under the law, but both of them robbing us. Large quantities of silver ore was taken or stolen from our mines after we had taken it out, and such were the threats against us, that we did not dare to go out and defend it, as we would have been in great danger of losing our lives by so doing. The ores so taken were the very richest, and those containing the largest amount of silver.

The captures or robberies of our mules and stores, of which I have spoken, occurred at various times during the latter part of 1866, and the early part of 1867; that is, the most of them occurred during the times stated, and principally by the Liberal authorities. (Pp. 31, 32.)

Now, when we consider that Exall claimed to have been a witness of and a sufferer from these so-called persecutions and molestations between about

September 11, 1866, and about March 20, 1868, *a period of a little over eighteen months*, it is remarkable indeed that he could point to the particulars of but *one single instance* of the malicious and lawless acts that had made mining operations impracticable and driven him from the mines, and that not the instance claimed, in the court below, to be the *most aggravated and to be supported by documentary evidence.*

It may be, as he pretends, that he "can not state dates and names with any degree of certainty" and that "Mexican names" are "hard" for him to remember, but that fails to explain away his failure to identify by *essential particulars* the wrongs to which he had been subjected, as he would have done, undoubtedly, if what he relates in generalities had ever occurred.

It is to be noted that the deposition given by Exall on December 2, 1869, *was the first statement in writing he had made touching his pretended expulsion from the mines, on March 20, 1868, an interval of something over fifteen months;* and as those having in hand the preparation of the claimant's case must have known that to allow the witness to avoid giving particulars in this first-written statement of his wrongs, under the flimsy excuse of a *non mi recordo* as to names and dates, must inevitably encumber the case with an additional load of improbability, the inference is a fair one that this vagueness was *predetermined*, for the double purpose of shielding

Exall's perjury and of baffling Mexico in any attempt to expose it. In no other way does it seem possible to make the conduct of the witness and of the claimant's agents consist with common sense and the ordinary rules of human conduct.

But it must not be supposed that we admit that Exall truthfully related the one single instance of persecution he was able to identify—we mean his so-called imprisonment by the local judge at Tayoltita—upon which the claimant rings a variety of changes, in the endeavor to make this one incident supply the place of the many that should have been produced, and whose absence from the record it is not attempted to account for.

THE PEREZ AFFAIR.

Exall relates the affair with the evident purpose to create the impression that the judge was guilty of an unprovoked aggression; but, the truth is, the difficulty was started by some remark of his own, in bad Spanish, which the judge took as insulting, whether so or not. This appears by the accounts of two other witnesses of the claimant, James Granger, a particular friend of Exall's and one of his subordinates at the mines, and John P. Cryder, also an intimate acquaintance and a near neighbor of his.

Granger says (p. 48):

> In the month of December, 1867, or January, 1868, the superintendent, Charles H. Exall, was arrested and imprisoned by the

"juez conciliador" of Tayoltita, Nicanor Perez, on a mere pretext, without any reasonable cause whatever. The particulars are as follows: Mr. Exall was occupied in a private room, and in private conversation, and while so engaged, said juez, or judge, Perez, entered the store at the hacienda, and without speaking or asking permission, he passed into a private storeroom adjoining, and Mr. Exall observing this, stepped to the door of said storeroom, and in a polite manner addressed said Perez, saying that no one was allowed to enter said storerooms without license, and if he had any business to please communicate the same to him. Said Perez came out of said storeroom in a great rage, and asked Mr. Exall if he thought he, Perez, was a thief, or wanted to steal anything. Mr. Exall denied any such idea, and stated that, in requesting him to leave the private storeroom, he was merely carrying out the general rules of the company.

Said Perez would listen to no explanations, and when he went out remarked that he, Exall, should hear from him. About half an hour after, an order came to the hacienda for Mr. Exall to attend, forthwith, before the said juez, or judge, Perez, which order Mr. Exall obeyed, and upon entering said court room, said Judge Perez commenced a tirade of the most infamous personal abuse of said Exall, without allowing explanation or justification, sentenced said Exall to pay a fine of, I think, about $50, and imprisonment for two months. Exall was confined in the hacienda until the next morning, when he was sent for by said "juez," who did lock up said Exall in an old empty house, with the declared intention of sending him to San Dimas to complete his sentence. Said judge remarked, at the same time, that he could not permit Exall to ride even his own mule to San Dimas; that he should treat him the same as he would treat any common prisoner.

Cryder testifies to the same effect (pp. 68, 69), and another witness, Marcos Mora, called by claimant, says that the local judge, Perez, *told* him that he had imprisoned Exall "*because he had personally insulted him;* and that, in revenge, he had fined and imprisoned him." (P. 87.)

Both Granger (p. 48) and Cryder (p. 69) tell us that the judge had Exall brought before him, and, after a volley "of the most infamous personal abuse,"

sentenced him to pay a fine of $50 and suffer two months' imprisonment. Cryder says the judge ordered the guard "to compel Exall to go all the way to San Dimas on foot and not to allow him even to ride his own mule, saying the judge would learn the Gringos (as Americans are called) *to treat him with deference and respect.*" (P. 69.)

Exall, we are further told, was then disposed of by being locked up for the night in a wretched place with "a most disgusting smell" and "filthy beyond description," where Granger and Cryder found him next morning "engaged in the work of defending himself from the attacks of millions of fleas." (Pp. 69, 48.) After this night's imprisonment we are told Exall was released next day on giving security for the payment of the fine.

Turning now to Exall's testimony (p. 31), we discover that he makes *no reference whatever to the judge's abuse*, which, if it happened, was worthy of "a beggar in his drink," or *to the harsh instructions to the guard*, or *to the "millions of fleas."* Had he forgotten these circumstances of insult and aggravation? Was it possible for him to lose sight of them, *if they had ever happened?* Can that shortness of memory, *so useful to him*, be allowed to avail him here? Was it probable that this swift witness would forget to detail, with unction, facts so well calculated to inflame his story of persecution?

Exall's account of his difficulty with the judge is discredited by other omissions besides his silence as to the provocation he himself offered, whether intentional or not; that is to say, he failed to give the judge's name, the better to identify the incident, and the date and duration of his imprisonment—*facts which must have been intentionally withheld*, in order to further the witness's purpose to produce the impression that the affair with the judge was extremely serious. It would have defeated this purpose if the witness had told the truth and given the same account of the matter in his deposition as he gave on the day of its occurrence in his written report to the Jefe Politico at San Dimas, asking relief from the *constructive* imprisonment under which Judge Perez had placed him, in which he uses this language:

> After being his prisoner for an hour, not being allowed to speak to anyone, and being guarded, I asked if he intended putting me in jail please to do so, as I had a headache, and wished to lie down. *He then gave me permission to go to the hacienda, but to consider myself still his prisoner*, and ——— at his house whenever ordered. (P. 280.)

That the imprisonment from which Exall requested the jefe político to release him was nominal only clearly appears by the concluding words of Exall's report, namely: "Please act on this immediately, *as I don't care to be any longer under restraint than possible*," the "restraint" referred to consisting in the judge's command "*to consider*" *himself* "*his prisoner*," and report "at his house whenever ordered."

The report contains the following detailed account of the "affair":

C. JEFE POLÍTICO, *San Dimas, Durango:*

DEAR SIR: This morning about 11 o'ck Sr. D. Nicanor Perez came into the store belonging to the hacienda, looked around, saluted us, and then walked into the storeroom adjoining the store, the time I was behind the counter, and seeing him in there where *no one* was ever allowed without permission, I, *in as polite Spanish as I was master of*, requested him to come out, and after he came out I shut the storeroom door. He then asked me if I thought he was a rogue and wanted to steal. *I told him as well as I could*, certainly not, and that the reason of my asking him out was that no one was ever allowed in there without permission. He then stated that he was there on official business, and wanted to see Matias (our ——) who was at the time working in the storeroom. I immediately called Matias out, and he and the ——— then went outside of the store. A few minutes afterwards he returned and talked in a very excited manner, feeling himself much insulted. I told him nothing was meant by what I had said, and he left and returned to ———.

At about 12¼ o'ck, just as our dinner bell had rung, a mozo brought an order from the judge, which I inclose. After we had eaten, Mr. Slone went up to see the judge. He had collected around his house a number of men, and in the house preparations had been made as if resistance was expected and force might be required. After getting into his room, I requested Mr. Slone to ask him, *as I was unable to ask him myself*, what was the business he wanted to see me on. *He replied he had been grossly insulted, and pushed out of the store, when he was on official business.* This I of course denied in a most emphatic manner, having acted only as before stated. I then told him that in requesting him to come out of the storeroom I had no intention of insulting him or hurting his feelings, but was simply enforcing the rules of the hacienda in not permitting anyone to go in the storeroom without permission. This he would not listen to, and persisted in saying I intended to insult him. I of course did not, *and, from my ignorance of the language, could not argue the point.* After some time spent in talking to this effect, I asked him if he had gotten through with me, as I desired to return to the hacienda. He replied, yes, he had finished. Mr. Slone and I then left, and bid him good-by. As we reached the corridor, he said *he never wanted to see me in his house, except on official business.* To this I replied, "Very well, sir," and turned to leave. He called me back, saying not to go; if I did he would send a force after me, and they would

shoot, and insisted on my return into the house. I did so, without any remark. He then said I was his prisoner. I then requested him to know what was to be done. He said he would put me in jail until he could receive instructions from San Dimas. I remained passive, and he then gave full license to his tongue, abusing me in the most violent language. Then and several times I repeated my statement of the occurrence in the store. To this he paid no attention, and treated me with utter contempt, and persisted in his intention of putting me in jail until he could hear from Sn. Dimas, and would listen to nothing that I might say. (P. 280.) (Italic our own.)

Taking Granger's, Cryder's, and Exall's accounts together, it is perfectly evident that they do not give a correct version of the "affair," for it is hardly possible that Judge Perez could have become so violently excited unless he had received a real or imagined provocation bearing some reasonable proportion to his conduct. It seems to us, therefore, fair to conclude that either Exall intended to insult the local dignitary, or that his bad Spanish, emphasized by shutting the door on the judge's back, was so understood; for the latter went off in a tempest of wrath, demanding to know if Exall "*thought he was a rogue and wanted to steal*," and also remarking that he "was there on *official business* and wanted to see Matias (our ——), who was at the time working in the storeroom."

According, then, to this narration of Exall's in his report, it is evident there was much more provocation offered to the judge than the depositions show, which can only be accounted for by the circumstance that when the testimony was given there was *a*

strong motive for manipulating the facts, whereas when the report was written there was none.

This examination of the Perez incident shows clearly that it has no tendency whatever to establish the existence of any hostility toward La Abra on the part of the local authorities at Tayoltita, much less a degree of hostility which compelled the company, as contended, to stop business and abandon its mines and other property. It was, on the contrary, a purely personal difficulty between Exall and the judge, and there is not a particle of evidence to show that it did, in any way, affect the company or its business. Indeed, according to Exall's report, when he and his companion, Sloan, were dismissed by the judge, the latter remarked that he never wanted to see him (Exall) in his house "except on official business," which did not look much like he was trying, by tyrannical methods, to force the company out of the country, or was disposed to deny it, or its superintendent, even, his official countenance whenever it should be invoked.

It is to be noted, also, that Exall's report shows that the Perez "affair," as he calls it with some levity, occurred on January 7, 1868, *more than two months before he claims to have been driven from the mines.* It is for this reason a suspicious and derogatory circumstance that he does not make the slightest effort to give the date of the "affair" in his deposition, fearing, as we must assume, that its

remoteness from the time of his so-called flight, namely, March 20, 1868, would destroy the weight of the incident as evidence. Certainly there is not, in our apprehension, the least handle for saying that this "affair" had anything to do with the so-called expulsion of the company from Mexico.

But the Perez "affair," as presented by Exall, Granger, and Cryder, *proves too much*, for, considering the terrorism which they say prevailed in the mining district of San Dimas, it is remarkable that Exall dared to treat the judge as an intruder by requesting him to leave the room he had entered against the company's rules, and it is equally remarkable that the judge should have paid any attention to the request. The fact that the request was made and straightway obeyed by the *tyrant* adds no little to the improbability of the claimant's contention that its enterprise in Mexico was broken up by a reign of terror.

In the conclusion of his report, Exall thus freely refers to the judge:

> My dear sir, I have before given you as minute a state of events exactly as they occurred as 'tis possible to write, and from which you will see that if I have given any cause to Dn. Nicanor to imagine himself insulted, it was done ignorantly, as nothing was further from my thoughts than insulting him or hurting his feelings in any manner, *and I submit it to your judgment whether I deserved the treatment which I have been subjected to, abused and insulted, without any provocation, and have no redress left me.* But for being a prisoner, I would come and see you in reference to the matter, but unfortunately necessity compels me to write.
>
> *Dn. Nicanor intends writing to San Dimas, and will of course*

give his version of the affair. Please act on this immediately, as I don't care to be any longer under restraint than possible. (Pp. 280, 281.)

It may be repeated that this report was dated January 7, 1868, *a little over two months before Exall was driven from the mines, as he says,* but its tone is certainly not that of a person who was living outside of the protection of the authorities and among a hostile, lawless people, and who testifies that he and the other employés of the company at the mines "*were in constant fear of our lives.*"

This exaggeration of Exall's is rendered more absurdly false by the testimony of Sloan, who went with him before the judge, and who says that, "from what he saw of *the affair*," the difficulty grew out of the fact that "the judge went into the hacienda to speak to one of the peons who was at work there, *and the superintendent thereupon put him out*" (p. 120). Indeed, according to Exall's own report, when he appeared before the judge, and asked what he wanted, the judge replied, that "he had been grossly insulted, *and pushed out of the store,* when he was on official business" (p. 120); and Granger's statement, that Exall was imprisoned "for two or three days because he REPROVED Judge Nicanor Perez," is quoted with approval in respondent's brief below (p. 114). Bold conduct, indeed, for a *defenseless* American who was *in constant fear for his life!*

Contrast all this with Exall's statement in his deposition that he was arrested by order of the local magistrate and "*thrust into prison!*"

The prison into which this martyr was "thrust" was *the hacienda where he lived.* He says he was ordered to remain there; and that he considered himself a *prisoner* is shown by the concluding words of his report on appeal to the Jefe Politico: "Please act on this immediately, as I don't care to be any longer *under restraint* than possible" (p. 281). It is, evidently, to this imprisonment that Sundell refers when he says:

> Exall came over to San Dimas and told me he had some trouble with Nicanor Perez, because Nicanor Perez wanted to go in the storeroom where Exall was, and Exall got him out of the storeroom and Nicanor Perez got offended. If I remember right, he arrested Exall for *a few hours.* (P. 527.)

Nor is it inconsistent with this view that the witness, in his next answer, says that Exall's statement to him was made "the next day Exall got out," for the durance at the hacienda was as much an imprisonment to Exall as though he had been shut up at Raventon, or anywhere else. As will appear further on, the witness probably fell into error in saying that Exall's statement to him was made the day after the latter got out of prison.

A singular argument is based on the following letter, in connection with the theory that the alleged

outrages and indignities were put upon Exall after his report of January 7:

Señor DON MIGUEL LARENGA:

DEAR SIR AND FRIEND: I have received your letter dated yesterday and that of Messrs. Storzel, Bartning & Co., and as I intended to come here I have deferred my answer until my arrival.

I am very sorry that Messrs. Storzel, Bartning & Co. misunderstood what I said to them respecting this matter, and have again troubled you with it. Within three or four days I hope to set out for Mazatlan, when I shall see those gentlemen, and I believe I can arrange the matter satisfactorily with them.

I am, your most affectionate servant,

CHARLES H. EXALL,
Administrator La Abra Silver Mining Company.

SAN DIMAS, *January 12, 1868.*

(Pp. 279, 280.)

It is said that as the letter bears date at San Dimas, January 12, 1868, therefore Exall must have been released from thraldom on the preceding day, the 11th! But why not the 8th, 9th, or 10th? The letter is worthless for any such purpose.

But the theory in support of which the letter is invoked is not even plausible in view of the testimony, which warrants the conclusion that Exall was released from restraint on January 7, on Granger's furnishing *security* for the payment of the fine of $50. Exall says (p. 31), "I was released through the personal influence of *a* Mr. Granger, who had to promise payment of the said fine." Granger says (p. 48), "By personal influences I brought to bear, and by *securing the payment* of the fine imposed upon him, I managed to get Mr. Exall released;" and

Cryder says (p. 69), "Mr. Granger managed, with some influences unknown to me, and *by securing the payment of the fine, to get Mr. Exall released*," etc. It is thus evident that it was the *securing* of the fine, and not its *payment*, that was the condition of Exall's release, and as the company's expense account (p. 743) shows that the fine was paid on January 8, and charged up as a "*prestamo*," we may fairly conclude that the release on security took place on the 7th of January and that the fine was actually paid on the following day.

It is furthermore extremely improbable that Exall's letter to Larenga would have been *wholly silent* as to the indignities and persecutions alleged to have been heaped on him, if he had just emerged from such treatment. But again, if Exall had been seized and thrown into a loathsome prison after his letter of January 7, which, it will be noted, appears to have been copied in the letter book *after* the letter of January 12 and therefore must have been a true history of the imprisonment up to that date, he would hardly have allowed that letter to stand as his only version of the "affair," but would have written a further account and put it also in the copy book. At the very least, he would have referred to the matter in his next letter to Treasurer Garth, dated January 24, 1868 (p. 281). And it is simply incredible that Exall should have been subjected to this so-called disgusting treatment for

several days and yet that Sundell and Torres, his friends, should have been ignorant of the fact.

It is true that Señor Zamacona states that Exall was imprisoned *four days*, but it must be recollected that he spoke *without the light of the new evidence.*

Exall, in his rebutting evidence, states that the passion exhibited by Perez was affected and "a pretext for locking me up and *paralyzing the works of the company*" (p. 155). But can it be that there was no report by Superintendent Exall to his company of so serious an interference with its business? There is no such report in the letter-press copy book, and *there could have been none at all*, as the first that Treasurer Garth knew of Exall's imprisonment was learned from him on his return to New York, in 1868, when he told Garth "*that he was imprisoned for about two weeks*" (p. 706).

Which, now, is the more probable theory? That the testimony about the pesthouse, the millions of fleas, and the hard sentence of the judge, is unworthy of belief, or that Exall, having suffered these things, forgot or neglected to mention them in his depositions, made no report of them to the company at New York, and even kept them from his friends, Sundell and Torres. Counsel opposite seem to forget that witnesses, to be believed, must not only swear, but *swear credibly.*

When the learned counsel opposite shall have re-

moved these difficulties from his path, it will be time enough to inquire why the Government of Mexico did not examine Judge Perez on the "affair" between him and Superintendent Exall. As matters now stand, speculations of that sort are a waste of time.

NO DENIAL OF PROTECTION AS FALSELY CLAIMED.

When it is considered that the claimant's case is built on the complaint that the Mexican Government denied it the protection of the law, it is simply amazing, *if the complaint is not a fabrication*, that so important a matter should be dismissed by Exall, in his deposition in chief, with this sweeping statement:

> I had frequently applied to the proper military and civil authorities of Mexico, both in Sinaloa and Durango, for redress and protection against the violence stated, but was rudely denied by both in every case, and could get neither: and these threatened acts, and the acts of violence, were encouraged and connived at by said authorities, if not actually instigated by them, which last I believe to be the fact also. (P. 31.)

We are bound to presume that these repeated applications to the Mexican authorities for protection were made in writing and that the home office of the company in New York was kept duly apprised, in writing, of all such proceedings. Indeed, we think there can be no doubt that these applications for protection, *if made at all*, were made in a regular, formal way, because the company lays stress on the fact that it employed a distinguished Mexican lawyer, Jesus Chavarria, to attend to the business.

It was, therefore, little short of effrontery for the claimant to offer *a mere sweeping generality in support of the great fundamental contention in the case*, without the least effort to account for the absence of the documentary proof for which the case imperatively calls. Furthermore, there was no attempt to interrogate the lawyer, Chavarria, in such a way as to bring out the particulars of his alleged repeated solicitations for protection, as counsel for the company. (See Chavarria's dep., p. 83.)

In this state of things, may we not ask if the court should not presume that applications for protection were never made, or, *if made*, were not produced because they would show that the Mexican authorities did not disgrace their civilization by denying the protection sought.

In the face of the peremptory instruction repeatedly given by the company to Exall to stand up firmly for its rights and to meet any refusal of the authorities to respect them by formal protest, *as a basis for an appeal to our Government*, and of the fact that "an eminent Mexican lawyer" was retained by the company to lay the proper foundation for a claim against Mexico, the first written account of the so-called expulsion of the company *from any source whatever* is Exall's first deposition, subscribed and sworn to on December 2, 1869 (p. 30), *or one year and nine months subsequent to the pretended occurrences therein mentioned!*

This is the more remarkable when we recall that it was the practice of the company to make a record in its letter books of its communications with the authorities. This was done by Superintendent Bartholow when he resisted the excessive tax (p. 215), by his successor, De Lagñel, when he replied to Valdespino's application for a loan (p. 237), and by Exall whenever he applied for prorogues, and when he replied to Olvera's notice to produce the titles of the company (p. 274), and when he filed an opposition to Soto's denouncement of the hacienda Guadalupe (p. 278). Even Exall's letter excusing his failure to keep his agreement with the local officials on a certain occasion was copied in the letter book (p. 267), and so was his letter appealing to the Gefe at San Dimas in the matter of his arrest by Perez (p. 280).

Here, then, is a claim which started at $1,930,000, and in less than three months grew, like Jonah's gourd, to $3,000,030, and afterwards expanded to $3,962,000, and which rests on the charge that Mexico rejected the company's appeals for protection from violence and allowed the local authorities of San Dimas and Tayoltita to drive it from the country by brute force; and yet, incredible to relate, it is not dignified by the support of a single document, or, indeed, by any evidence, to show that it ever had such support.

When before, in the history of human affairs, was

presented the spectacle of a corporation urging through its Government an immense claim against another nation upon the flimsy basis of depositions taken long after the occurrences to which they relate—depositions stuffed with hearsay, wanting in specification, and unworthy of belief?

Exall, whose testimony is fullest on this head, is conceded to be perjured, and Marcos Mora, who was brought from jail, where he was held for official delinquency, to assist the governor of Durango in determining the action to be taken on a pretended appeal of the company for protection, are two of the witnesses vouched, and the third is "*the eminent Mexican lawyer, Jesus Chavarria,*" whom one would suppose fit to sit by Ulpian or Papinian, from the unmeasured deference which it has been found necessary to pay him in the brief below.

Chavarria, it may be observed, was introduced to Rice, who represented Exall, by Judge Barraza, but the latter is particular to say: "Without knowing what was the business for which he required the services of a lawyer in this city" [Durango]. (P. 92.)

In his argument before the Commission Judge Black evidently treated the testimony of Exall and Mora as unworthy of consideration, for he said: "This case can not be decided against the claimant without pronouncing *Chavarria* a perjured man." (Respondents' brief, Ct. Clms., p. 131.) Who, then,

is this pillar of appellant's case to whom obeisance is made by counsel opposite whenever his name is mentioned?

Experience teaches that it is safe to judge a man by the company he keeps. *Noscitur a sociis.* Let us now apply the principle to this man of law.

The record of the case before the Commission shows that Chavarria was on familiar terms with the Gefe Politico, Marcos Mora, and his successor, Macario Olvera, who were, according to appellant's theory, two knaves engaged successively in prostituting their official authority to accomplish the wicked intent of *driving the company from its property and appropriating it for the joint benefit of themselves and its discontented employés.* Indeed, Exall goes so far as to say that a few nights before his so-called "flight" an attack was made on the company's hacienda by some men, *headed by the Prefect Olvera,* and he thus describes the plottings of Olvera, Mora, and Soto:

> Said judge Guadalupe Soto, and the prefect, Marcos Mora, encouraged this spirit among the men, and *incited them to riot* by telling them, falsely, that the company came there to annex Durango and Sinaloa to the United States, and they ordered all the men whom I did employ to quit work, which nearly all of them did do frequently for weeks at a time, paralyzing the works, and the business of the company, so that I sometimes had but few men at work, and the men who did work had to so manage the same as to deceive the prefect, or keep the fact from his knowledge that they were still working for the company; and on one occasion, Aquilino Calderon attempted, notwithstanding this order, to work at the mine "El Cristo," but thereupon he was by force of arms compelled, by said judge and prefect, to quit the company's service, and they, *the said Prefect*

Mora and Judge Soto infused the same hostile feeling into the whole mass of workmen, and said Mora and Soto issued the written communications or orders to me, which are referred to in said defensive testimony, requiring me to employ all the men, and work the mines as Soto and Mora directed, or to abandon them to the people to be worked by themselves as they pleased; but those written orders *were mild compared with verbal orders given me by said officials, from time to time, and finally the last order or warning by the Prefect Olvera, notifying me to abandon the works and leave the country, which forced the abandonment of the company's works and mines. It was but a foregone conclusion with said authorities, as from their words and actions I felt, weeks before that time, that the abandonment was inevitable.* The local authorities and other politicians urged the workmen to hostile demonstrations, and at one time they charged upon the hacienda and broke in the doors. This state of hostile feeling continued, and said turbulent characters continued to harass the company in its operations, *and when, soon afterwards, Macario Olvera, Soto's son-in-law, became prefect, matters grew rapidly worse, so much so that only a few nights before I escaped, an attack was made upon the hacienda of the company by some men headed by said Prefect Olvera himself, as I was informed the next day by one of the friendly Mexican workmen, a muleteer.* They were armed with pistols and machetes but as I had been previously warned of it by said friendly muleteer, *I was in some measure prepared for the attack*, and after they discovered my position and strength, they retired for that night. *Soto and Olvera* both told me that unless I employed all the men who were out of work in that district, which they knew was utterly impossible, *that they would let the working people drive the company out of that district and give them the mines to work as they pleased.* Their verbal orders to me were much more pointed, emphatic, and hostile than anything they wrote me. They were working openly and covertly to get us out, and to escape as much of the responsibility as possible for so doing. (Pp. 153, 154.)

It also appears in evidence that this man Olvera was killed in a "disgraceful emeute" in the streets of San Dimas in the summer of 1870. (Pp. 73, 82.)

Turning now to the deposition of the "*eminent Mexican lawyer, Jesus Chavarria*," we find that in July or August, 1867, he visited the Abra mines, in

company with Marcos Mora; that he became satisfied from conversation with Mora that both he and the mining people were bent on annoying and driving the Abra company away; that Mora and some of the miners stated that the company were "annexationists," and therefore "hateful to Mexico;" that it was thought best "to drive it away from that mineral anyhow;" that Mora also gave him to understand "that *he* [Mora] *had especial interest in the expulsion and despoliation of the company, in which case he intended to denounce the mines at Tayoltita*, and HE OFFERED DEPONENT A SHARE IN THEM, WHICH DEPONENT REFUSED, and reproved his conduct in permitting the operatives to steal the ores," etc. (P. 81.) Further on (p. 83) he gives an *affirmative* answer to this question:

> **Nineteenth. State whether it is true, or not, that in a conversation with Marcos Mora, the gefe politico, at Tayoltita, in July or August of 1867, *that the gefe politico admitted to him that he had made money during the time he was acting as gefe politico, by dividing the profits on the ores stolen from the Abra Silver Mining Company*, and *which were reduced by the native miners at the small reducing works belonging to Mexicans in the vicinity of Tayoltita?* State, also, whether the said Mora made any statements to this effect, or *had the temerity to invite witness to participate in that unlawful undertaking.***

And, in reply to the eighteenth question, he said that before Marcos Mora became Gefe Politico, in February or March, 1867, he was poor, and, speaking of his own knowledge, that "shortly before he [Mora] was committed to prison for the crime before

referred to" he "opened a store and, shortly after, a pawnbroker's shop."

In a previous answer the witness said:

> That it is a fact, that Mora was tried *for misconduct in office;* that he was *imprisoned and tried in this city,* before the second criminal judge; that Mora was *further accused of malversion of the public funds, and that deponent was the lawyer who defended said Mora.* (P. 81.)

What attracted these two men, Chavarria and Mora, to that forlorn mountain hamlet, Tayoltita, and the neighboring mines is unexplained, unless we accept Mora's improbable, not to say *incredible*, statement that they went there "*from curiosity and for amusement.*" (P. 89.)

However, the "*eminent Mexican lawyer*" having satisfied his curiosity and been sufficiently amused, no doubt, retraced his steps, and on the road from San Dimas to Gavilanes fell in with Macario Olvera, and the two were soon deep in talk upon the absorbing theme of Mora and the plot to expel the Abra Company from its mines and works. Here is Chavarria's account of the conversation in reply to the tenth question:

> That he met Macario Olvera on the road, from San Dimas to Gavilanes; that they conversed together upon the subject referred to in the question, *and Olvera acknowledged to him the plans and intentions existing at Tayoltita, on the part of the authorities and the operatives, to injure and expel the Abra Company from their mines by intrigues, or such direct and indirect means as it would be impossible for them to resist, and that Olvera revealed to deponent that he was interested in that hostility, and in combination with the gefe politico, whom he was going to replace, to carry out the sinister projects before referred to.* (P. 82.)

The twentieth question and its answer we give in the very words:

> **Twentieth.** State whether the gefe politico, Marcario Olvera, Marcos Mora's successor, made any admissions or boasts, in witness' presence or hearing, to the effect that he had made money out of the "gringos" *by the sale of the ores belonging to the Abra Silver Mining Company, or from the sale of their tools, or pieces of their machinery, or any of the other implements belonging to the said company.* State, also, what he heard said, by any credible persons, concerning the sale and destruction of the company's property at Tayoltita; also, *what was the general reputation of the gefe politico, Olvera, and also that of Mora, as to their honesty in their official capacity,* during the time they were acting as gefes politico in that district, *in the years 1867, 1868, and 1869?*
>
> **Answer.** That the matter referred to in the question *is true;* that he was informed by credible parties at San Dimas that the said Olvera was engaged in the speculations, as stated in the question, *and that neither his nor Mora's reputation was good in the years mentioned in the question.* (P. 83.)

Turning now to the deposition of Marcos Mora, we find that he does not hesitate to characterize as "*false*," or "*wholly false*," several matters imputed to him by the "*eminent*" Chavarria (pp. 89, 90), from which it is very evident that he was not in the habit of approaching Chavarria cap in hand. Nor was it to be expected that he would be, for the quotations above given from Chavarria's own deposition make it perfectly clear that he is quite as much of a knave as Mora or Olvera are represented to be. What other estimate can be placed on a man to whom Mora and Olvera, branded by him as persons of bad repute (p. 83), were not afraid to unbosom their nefarious schemes for the expulsion of the company and the appropriation of its mines

and works? Mora and Olvera knew their man, for there is not a particle of evidence to show that Chavarria communicated the plot to the company, or took any step whatever to bring the guilty officials to justice. He should have been questioned by the claimant on those points, but was not.

Surely no high-sounding praise can attract the respect of the court to this fellow, who has disgraced the profession to which he belongs.

After this insight into Chavarria's character, we are not at all surprised to find that his testimony on the point of the company's so-called appeals to the Mexican authorities is precisely such as might be expected from the lips of a corrupt witness. All that he says about the "*innumerable steps and measures*" taken in the company's behalf for protection is covered by the following question and answer:

> Fifteenth. State whether the protection of the national and State authorities was *duly and legally* invoked on behalf of the Abra Silver Mining Company, at the end of 1867, to protect it against the unlawful attempts made against it and the robbery of its property by Mexicans at the instigation of the gefe politico of the district and the local authorities at Tayoltita? If this be so, then state how you learned the facts? Who was employed by the company as its agent, to represent the facts to the authorities? Who was employed and acted as the company's attorney at the time the said protection was invoked? State what was told him, and what was done in his presence by the national and State authorities when the said protection was asked for, and in reply to his petition?
>
> Answer. That the matter stated in this question is true in all its parts; that deponent, employed by Mr. Rice, of California, as Exall's lawyer, *repeatedly solicited, from the State government, protection for the Abra Company, to suppress the robberies and*

outrages which the company were experiencing at Tayoltita, but all to no purpose, as, after innumerable steps and measures, the executive of the State never even so much as requested the authorities at San Dimas to comply with their duties. The only answer given was, that the government of the State, at whose head was Francisco Ortez de Zarate, in 1867, would not meddle in private matters. (Pp. 82, 83.)

Here we perceive that generality of statement, commented upon above, under which fraud and perjury usually take shelter. Indeed, the avoidance of specification in this instance is so remarkable that we find much less difficulty in reaching the conclusion that Chavarria is perjured than in believing that he would have omitted to furnish some, at least, of the particulars of his repeated applications for protection in behalf of the company, or provide it with the documentary evidence necessary to support an application for the intervention of this Government, if he had, in fact, made any such appeals for protection.

The ignorance and bungling displayed by Chavarria in conducting that imaginary business are well commented upon by Señor Avila in support of his application to the umpire to rehear the Abra case. He said:

The least that could be expected of him [Chavarria] is that he should have known the fundamental law of his own country and the manner it has established to enforce the rights it guarantees. This instrument in its eighth article declares inviolable the right of petition respectfully exercised by writing, and that to every petition there shall be a corresponding resolution which shall be communicated to the party interested.

This first-rate lawyer ought then to have started by presenting in writing his application for protection to the governor. If he

did so, but the resolution was not communicated to him in writing, he ought to have resorted to the corresponding remedy, which he would have found in article 101 of the constitution, and in the writ called "*amparo*." If the district judge paid no attention to his complaint, he should have applied to the circuit court; and if even there it was disregarded he should have appealed to the supreme court of the nation. *It would have been absolutely impossible that in all these efforts he should have failed to get some documentary evidence to present.*

Without some document of the kind no court can believe upon his word a lawyer pretending to have done all he could and ought to have done in the interest of his client, *nor will common sense recognize him as an intelligent lawyer.*

(Ex. Doc. No. 103, H. R., Forty-eighth Congress, first session, p. 94.)

This is the *coup de grace*, fittingly administered, too, by a Mexican lawyer who has a proper sense of the dignity and responsibilities of his profession.

So long as the record in this case stands, it is in vain to parade what Judge Barraza or anybody else says about Chavarria's "*dignity and well-known integrity.*" A man who consorts with knaves, as Chavarria did, can not be far from being one himself.

EXALL'S TESTIMONY FURTHER CONSIDERED.

We now call attention to the character of the testimony the witness Exall gives in support of the claimant's large item for mule trains and supplies alleged to have been seized by "the military authorities of the Liberal Government of Mexico, a matter to be more fully treated later." He says:

The military authorities of the Liberal Government of Mexico, or those acting in that capacity, seized upon our mule trains on the road from Mazatlan to our mines in the State of Durango, loaded down with provisions and stores for the use of the employees of said company, and they, the military, appropriated

them to their own use, upon the plea that they were not provided for, and must have them as a military necessity.

Large numbers of our mules, and thousands of dollars worth of our stores and provisions, were captured in this way by the said military, during the progress of the war there. (P. 31.)

It will be observed that these pretended seizures are represented to have been made to meet overruling public necessities. They were an irregular exercise of the right of eminent domain, if they took place at all.

But where are the vouchers or *receipts* for the property taken? Certainly those who were enforcing the supreme law of the public safety can not be presumed to have seized the company's trains and supplies like highway robbers, without any intention of rendering payment. Surely the receipts given must have been sent to the company's home office in New York, with full reports from the respective superintendents. *There is, however, absolute silence on this head!* But that silence *speaks volumes!*

But, again, claimant examined Don Antonio de la Peña, who was the principal of the wholesale grocery and provision house of Peña & Co., of Mazatlan, which "supplied the company with provisions and other articles for their mining operations at Tayoltita" during Exall's time (p. 102), and Don Pedro Echeguren (p. 103), the senior member of the banking house and commercial establishment of Echeguren, Hermanos & Co., of Mazatlan, which

also furnished supplies to and did business with La Abra Company, in Bartholow's time, to the amount of over $100,000, and yet neither of these witnesses was asked if he could give any information, from his books or otherwise, as to supplies lost by seizure on their way from Mazatlan to Tayoltita. This is the more noticeable, because the witness Echeguren was very particularly examined as to the practice in Mexico of exacting "prestamos," or forced loans, to supply the public exigencies, from which it would have been an easy and natural transition to the alleged seizures of mule trains and supplies.

But the importance of showing that the seizures were the work of the *Liberal forces*, and not of the Imperialists, seems to have *stimulated Exall's reminiscent faculty*, for he deposes, with positiveness, that "the captures or robberies of our mules and stores" were "*principally by the Liberal* forces." (P. 32.) In the nature of things, he, *at the mines*, could have had no personal knowledge of the facts, and must have sworn recklessly. That he was not a witness of any such seizure is morally certain, or he would have said so.

The claimant has not scrupled to introduce hearsay freely into the case, yet the opportunity of eliciting from the witnesses Peña and Echeguren the story Exall must have told them when he reached Mazatlan in flight for his life, as he says, from the mines, was allowed to pass wholly unimproved! If

the account so given, *recenti facto*, had agreed with his testimony, can there be a doubt that both these witnesses would have been examined on the point for the purpose of corroborating the discredited Exall? And we are strongly inclined to think that the evidence would have been admissible to support the witness's extraordinary and improbable story.

It adds to the probability that Exall gave a full account of his *flight* to his friends, Peña and Echeguren, especially the former, from whom he borrowed $250 to pay his expenses to New York, that they were not Mexicans, but *Spanish subjects*, to whom he could talk freely. Indeed, the deposition of the latter shows that he had anything but a friendly feeling toward Mexico. (P. 105.)

But, however that may be, Exall must have poured his troubles into more than one friendly ear on reaching Mazatlan, after his so-called expulsion from the mines, and it is difficult to see why those who heard his "dismal treatise" were not examined. The failure of claimant, which did not hesitate to bring into the case any sort of evidence deemed helpful, to adduce such testimony seriously discredits Exall, and, with him, the case whose main stay he is.

Exall's statement that he was afraid to return to the mines any more we shall show to be false from his own letters farther on. He says, in connection with the so-called fact that he advised the company

to give up the enterprise, absolutely, that he understood "that said company was so advised *by others, who were citizens of Mexico*" (p. 32), but *strangely enough*, no clue is furnished *to those "citizens of Mexico."* How baffling such testimony must have been to Mexico, in preparing her defense! How discrediting to its case that claimant does not so much as offer an excuse for not examining those "citizens of Mexico!"

EXALL AND OTHERS ON THE VALUE OF THE MINES.

The simple answer to what Exall says about the comparative richness and the productiveness of La Abra's mines is, we repeat, that the conduct of the company *in abandoning its property rights* in the mines as well as its possession, and *preferring the uncertainty of a litigated claim for damages to such rich possessions*, is utterly at war with Exall's statements. It is sheer idiocy to say that this company, with a powerful Government like the United States to back it, would have tamely submitted to be despoiled of this bonanza, which, if it dared not operate, it could not at least have been afraid to sell.

But Exall's opinion as to silver mines was of no value whatever. He was both incompetent and uneducated as a mining engineer, as will be shown satisfactorily at a later stage of the argument. At present we will do no more than point to the fact that in his deposition in chief, given in 1869, he

describes himself as having the "*occupation of a merchant*" (p. 30), and in his deposition in rebuttal, given in 1874, as "cashier of the stockbrokers' establishment and banking house of Washburne & Thayer," of New York (p. 149), and that in neither does he refer to the fact that his regular calling was that of mining engineer. This, of itself, shows that he was no professional engineer, for a man's profession is too much a part of himself to be ignored or laid aside in that way, like a garment out of fashion. We may, indeed, be sure that if this witness had been a regular mining engineer the claimant *would have taken care to have it so stated in the two depositions.*

Besides Exall, other witnesses were introduced to testify in a similar strain of exaggeration as to the value and richness of the mines La Abra had been working, some of whom have referred to the books of scientists and explorers in supposed confirmation of their testimony, but it is a damaging circumstance that claimant did not, *instead of exploring into books for information*, examine on this subject two important witnesses—I mean the men from whom the mines in question were purchased, namely, Don Juan Castillo del Valle and Don Ygnacio Manjarrez. This is the more remarkable because the claimant did examine Del Valle as to the sale of the mines to the company and the passing of the deeds and purchase money between the parties, and then, at another time, examined him as to other mat-

ters. How, then, is the failure to examine Del Valle and Manjarrez with regard to the productive capacity of the mines to be accounted for, except on the theory that claimant had a purpose in avoiding the best sources of information; in other words, did not dare to evoke the truth from those who, by actual experience, knew more about the mines than Humboldt, or Ward, or the world besides.

The presumption against the claimant from this effort to suppress the truth is intensified, if anything, by the base artifice afterwards employed for the purpose of forestalling this inevitable presumption.

In rebuttal, and *after Mexico's case was closed, and all danger of contradiction and exposure was passed,* to wit, on June 22, 1874, it was sought to supply the wanting testimony of Del Valle and Manjarrez *through the lips of Thomas J. Bartholow*, who, on being asked:

> What exhibits were made to you, if any, by the former owners of said mines, Ygnacio Manjarrez and Don Juan Castillo del Valle, with reference to the value of said mines, the richness and abundance of their ores, and the profits with which they were worked by them, previously to the sale or transfer of the same by them to yourself and D. J. Garth, as agents for said Abra Company?

Answered, as follows:

> The parties named in the question, Ygnacio Manjarrez and Don Juan Castillo del Valle, represented to the said Garth and myself, both before and after the purchase of said mines and property, that the said mines El Rosario, El Cristo, La Luz, and its appurtenances, El Arayan, with Talpa and El Sanz

among its appurtenances, were among the most valuable of all the mines of Durango and Sinaloa, and they, said Manjarrez and del Valle, produced and exhibited to said Garth and myself their books, in which was written down and stated, with particularity, the profits with which they had worked said mines for a number of years preceding said sale, showing that the ore from said mines, which they had reduced, averaged them from 6 to 10 marks per carga of pure silver, with an addition of about 10 per cent of gold; and they represented to said Garth and myself, at the same time, that if said mines were worked on a larger scale, and with improved machinery, (such as we then contemplated erecting, and subsequently did erect on said premises), then that they would produce much larger profits, and they stated that the metals which had reduced from said El Rosario mine had yielded them an average profit of 11 marks, or $100 per carga of 300 pounds, in pure silver, with an addition of 10 per cent of gold; and during our examination of said mines, and immediately before we made said purchase, they blasted and took out an average lot of ores from said La Luz mine, and reduced the same in the presence of said Garth and myself, as tests of the value of said mine and its ores, and the same yielded, of pure silver, 6 marks per carga of 300 pounds, and they represented the veins of ore in said mines as being inexhaustible in supply; which, from my subsequent examination, I believe to be true. (P. 173.)

This effort to get before the commission these hearsay statements, falsely attributed to Del Valle and Manjarrez, as we firmly believe, and at the same time, *by indirection*, break the force of the testimony given by them in Mexico's behalf, deserves severe animadversion, and bears on its face the stamp of fraud.

If Del Valle and Manjarrez had made any such representations as to the yield of the mines as Bartholow says they did, we may be sure Garth would have stated them also; but he says nothing on the subject, *nor was he questioned about it.* This is sufficient to show the falsity of Bartholow's testimony, if

anything more was needed for that purpose. This witness, having studied over all the testimony that Mexico had filed, came up as a sort of *corps de réserve*, and furnished such additional testimony in rebuttal as the claimant's case seemed to require, as, for example, by swearing to the deliberate untruth that La Abra's superintendents "were qualified for their positions, *both by a knowledge of the science and practice of such mining operations*," the testimony on the part of Mexico, supported by the appellant's witness, Garth, being strong to the point that it was ignorance and incompetency that caused La Abra's failure, and not violence and persecution.

It is, indeed, a reflection on the company's case that both Del Valle and Manjarrez were not called and examined in this suit as to the representations they made to Bartholow and Garth touching the yield of the mines when the negotiations for their purchase were going on. It was most unfair to attempt to discredit covertly these men without affording them an opportunity to deny or explain the statements put into their mouths by Bartholow.

It is significant, too, that while Bartholow attacks and accuses of false swearing other witnesses produced by Mexico, he does not even suggest anything of the kind with reference to Del Valle or Manjarrez in his stealthy attempt to undermine their credit.

Now, let us compare the sober disinterested state-

ments of these former proprietors of the mines with the unscrupulous exaggerations of Exall and other witnesses.

Del Valle says (p. 139):

> That the business formerly established by the respondent produced from 80 to 100 cargas, and at some time as high as 200 cargas a month, *but that it never was a business productive of large gains*, and only yielded enough to enable the mines to be kept *in such condition as to make them salable to him;* that in regard to what is contained in the remainder of the interrogatory, he has heard various stories, generally unfavorable to the reputation of the Americans who purchased the mines, but that he knows nothing in regard to them of his own personal experience, for the reason that he did not return to Tayoltita, and for other different causes.

This witness had no motive to testify falsely, and certainly his second deposition (p. 78), which may be more particularly referred to further on, shows him to be outspoken and not afraid to tell the truth, disagreeable though it might be to those around him.

Manjarrez deposes (pp. 111 and 141):

> That he has been acquainted with the mineral district of Tayoltita for fifteen years; that in the year 1854, he and his partner, D. Juan Castillo de Valle, became the owners of the first mentioned of the mines that have been named over to him, and that during all the time that said mines were worked by them they produced *good profits up to the year 1865;* that they sold the mines and haciendas to an American company called the "Abra." (P. 111.)
>
> That it is true that this enterprise produced monthly from eighty to an hundred cargas of ore—all rubbish; that in ten years that the deponent and Castillo worked, *they never made more than enough to economically carry on the works which they had begun;* that in his judgment he believes that the Americans speculated upon the credulity of those who constituted the company in the United States, by representing to them that the acquisition of said property was of great importance, when in

reality it was only limited as regards its productiveness, as he has stated. (P. 141.)

The fact that Del Valle and Manjarrez sold these mines for $50,000 was, it would seem, full notice to the purchasers that they were not buying a bonanza.

EXALL IN REBUTTAL.

Returning now to the claimant's chief witness, Charles H. Exall, we desire to call the attention of the court to his deposition, given in rebuttal, on June 11, 1874 (p. 149), four years and six months after the date of his deposition in chief, given on December 2, 1869 (p. 30). Like Bartholow's, this deposition was made after the case of Mexico was closed, and when there was no fear of contradiction or exposure by additional evidence on the part of Mexico, and, furthermore, after the witness had studied over all the defensive evidence." (P. 150.)

He now attempts to go into details. He mentions Judge Guadalupe Soto, and the prefect, Marcos Mora, and the prefect, Macario Olvera, as in league with the turbulent, discontented populace clamoring for work, and as inciting them to acts of hostility against the company. Indeed, he goes so far as to make the incredible statement that only a few nights before his escape an attack was made on the company's hacienda by some men *headed by the Prefect Olvera.* (P. 154.)

The miners and the authorities being thus bent

on driving the company from the mines and turning them over to the natives, who were clamoring for work, the situation became so alarming, as Exall says, that he fled for his life with precipitancy.

His very words are:

> Only the day before I escaped, I was warned by the prefect, Macario Olvera, in person, that it would be better for me to abandon said works, and leave the country before any personal harm came to me, as he could not protect the company, he said, against public sentiment, *as the native residents of that district were determined not to remain without work any longer, but to take the mines and work them on their own account.* (P. 152.)

Again, he says:

> Soto and Olvera both told me that unless I employed all the men who were out of work in that district, which they knew was utterly impossible, *that they would let the working people drive the company out of that district and give them the mines to work as they pleased.* Their verbal orders to me were much more pointed, emphatic, and hostile, than anything they wrote me. They were working openly and covertly to get us out, and to escape as much of the responsibility as possible for so doing. (P. 154.)

Exall having fled, the question at once suggests itself, Did the howling mob seize the mines and go to work? Why, no! James Granger, Exall's intimate friend and successor, remained in full possession, unmolested, and at his leisure despoiled the mines of pretty much all the movable property he could sell or otherwise make use of. But who diverted the mob from their fell purpose? By what spell or sorcery did Granger keep this infuriated rabble from executing their lawless plan, hatched under the auspices of the local authorities themselves? If Exall tells the truth, there was nothing

to prevent the rabble from taking possession of the company's mines and haciendas, led as they were *by the local authorities.* But Exall did not tell the truth, and so we hear nothing of the mob after he left the scene. How easy it would have been to prove by Granger that the mob took possession. But his depositions show nothing of the kind. Indeed, in one of them he says, "Afterwards, when the superintendent, Carlos H. Exall, left, *I remained in charge as his representative*" (p. 129), and it appears by Soto's deposition that on August 7, 1868, *five months* after Exall's pretended expulsion and flight, James Granger, acting for the company, extended for a further term of seven months an agreement made between Exall and Soto by which the latter was licensed to occupy certain mining works (beneficio de metales) belonging to La Abra Company (p. 132), which shows that Granger was still in possession of the company's property.

Exall speaks of leaving the mines "hurriedly and secretly, *with my American friends*, to save my life." (P. 152.) A little further on he remarks, "*My American employees and myself* were in immediate danger." Again, on page 155, he says that he and his "*American employés*" and his "*servant*" made their escape to Mazatlan. But why were not the names of these people given, and, above all, why were they not given in Exall's deposition in chief? Why were these people not examined as witnesses?

What an opportunity to remove some of the discredit under which the claimant's case labors!

The omission to name these individuals, the omission to make witnesses of them, without excuse or explanation, was not only a serious embarrassment to Mexico, but *puts the stamp of fraud on the claimant's case*, for it is *incredible* that men should have acted with such fatuity in an honest case where so much was at stake, unless the inadmissible position be taken that, in deciding this controversy, the court may proceed on the theory that the claimant and its agents have acted without regard to the laws of human conduct by which judges are *necessarily* guided in passing on the motives of their fellow-men.

In his deposition in chief, Exall, as we have seen, contents himself with the following unsatisfactory reference to his efforts to secure protection from the Mexican authorities:

> I had frequently applied to the proper military and civil authorities of Mexico, both in Sinaloa and Durango, for redress and protection against the violence stated, but was rudely denied by both in every case, and could get neither; and these threatened acts, and the acts of violence, were encouraged and connived at by said authorities, if not actually instigated by them, which last I believe to be the fact also. (P. 31.)

The contrast between this statement—purposely made general to embarrass Mexico in preparing her defense, as must be inferred—and the detailed evidence on the same subject in Exall's deposition in rebuttal (pp. 158, 159), which was *secure from expo-*

sure by contradictory testimony on the part of the defense, reflects serious discredit on the claimant's case.

It is equally discreditable, we can not too often repeat, that the claimant has not produced a single document to establish this wretched and grossly improbable story that the Mexican authorities denied protection to the company's property.

We ask leave to repeat that we can not believe that the men of business representing this company in such grave negotiations with the local authorities, or that its legal adviser, would have been so inattentive to the interests under their charge as to omit to send to the home office of the company in New York full documentary evidence of everything connected with the rejection of their appeals for protection.

The failure to produce such documentary evidence, or offer any excuse for its absence, raises a strong presumption of fraud. Indeed, it was not far from an affront to the intelligence of the commission to lay the inferior evidence before it without a word of explanation, especially when coupled with the transparent plan to embarrass Mexico by withholding the details of those most improbable proceedings between the company and those in authority in the States of Durango and Sinaloa.

Nothing short of the most satisfactory evidence should suffice to convict the authorities of Mexico of the savagery charged in the claimant's memorial,

and the absence of that character of evidence, so naturally looked for, is conclusive that the imputation against Mexico is a fabrication.

Up to this point we have given much attention to the testimony of Exall. The intimate official relations between the company and this witness, as superintendent from April, 1867, until he left the mines in March, 1868, and his personal knowledge of the facts connected with the company's so-called expulsion from the mines, seemed to make it desirable, in point of directness and perspicuity, to open the discussion of the facts on the lines of his testimony.

The case, as thus developed, shows much disingenuousness and suspicious reticence on the part of Exall, and such a lack of disposition on the claimant's side to correct it by a proper mode of interrogation, where it would have been to the evident advantage of the claimant to do so if the witness was truthful, that the inference, harsh as it is, seems inevitable that *both claimant and witness were involved in a conspiracy to impose a fraudulent claim on the commission.*

The argument might rest here, and a decree for the United States might be asked for with no little confidence, on the simple ground that the claimant's case is *incredible*, when judged by the laws that govern human conduct—the only test, we repeat,

which courts of justice can apply to evidence involving motive.

So long, then, as tribunals of justice refuse to enter the domain of the miraculous, such a case as that presented before the commission by La Abra transcends proof by any amount of legal evidence.

But useless and unavailing as all the claimant's evidence must be from that point of view, the magnitude of the cause forbids us to pass by such of it as has not yet been noticed.

EXALL THE TYPE OF THE OTHER WITNESSES BEFORE THE COMMISSION.

In much of this testimony we shall see not only a repetition of Exall's dismal story, but a frequent recurrence of that witness's devious and discrediting methods, while the trail of the conspiracy will be everywhere visible.

It would, however, be a waste of time to notice this testimony with much particularity, in view of the consideration that all testimony which professes to support the charges on which the memorial is based has been shown to be incredible, and therefore false, by the conduct of La Abra Company and its trusted representative and agent, Exall. It can be more readily believed that any number of witnesses, of whatever credit, are false or mistaken, in a particular case, than that the laws ordained for

the government of the moral world have been miraculously suspended.

The witness Alfred A. Green presents himself under the bias of a claim before the commission against Mexico for $330,938.71, to which, however, he makes no reference, and which was afterwards dismissed.

His deposition is a connected narrative, an affidavit, in other words, and may be, and probably is, in the language of some third person who prepared it; for, as will appear farther on, the manner in which claimant's testimony was gotten up is marked by irregularities which are destructive of its credit.

Green, like Exall and the other witnesses who support the claim, testifies largely with the suspicious generality of fraud.

He says, for example:

> On several occasions, in January, February, and March, 1868, in San Dimas district, I have heard Mexican citizens and authorities say that they meant to drive out and kill off all the Americans, and get their mines and property.
>
> This feeling of hatred and hostility was shared by the military authorities and soldiery, and by the local civil authorities, and was encouraged by them. It grew in intensity and boldness until it culminated in open violence and forcible dispossession of La Abra *and other companies. Several other American companies, besides La Abra, were driven off in a similar way.* (P. 36.)

But why were not these "several other American companies, besides La Abra," named, that Mexico might have an opportunity to test the verity of the evidence? And why were not the "Mexican citizens and authorities" named who made the savage threats

against "all the Americans?" The witness gave his testimony in the city of New York, and could have furnished such particulars without personal risk.

He also states that La Abra "was finally driven off and compelled to abandon its mines, ores, and property *by the acts of the authorities of Mexico*" (p. 35), and there stops short, and what is more, *is allowed by claimant to withhold the details on which his statement rests.*

He says he applied in vain to the authorities for redress in his own case, but, like Exall, gives no particulars, not even the names of the officials before whom he went. It was most improper to put in such evidence when the witness *admits* that he had "*official and unofficial*" papers elsewhere (p. 37), and, at the same time, complains of an imperfect memory. These papers should have been obtained. It was simply trifling with the commission not to have them produced; and the inference is that their existence was a mere pretense, or if not, that their production would have been hurtful to the claimant.

As was to be expected, this witness indulges in the usual hyperbole about the productiveness of claimant's mines.

Enough, certainly, has been said to show that this deposition is entitled to no weight. The presentation of such evidence raises a violent presumption of fraud.

The deposition of William Henry Smith (pp. 40–43) is unworthy of consideration for several reasons. This witness was engaged in mining in full view of the Abra mines, and, although *conveniently absent* when Exall's so-called expulsion took place, pretends to have knowledge of the outrages said to have been practiced on La Abra from time to time, *yet does not give, nor was he asked to give, a single instance of them.* We submit that these generalities, which do not admit of identification, should not be allowed the weight of a feather against the Government of Mexico.

As if to baffle any attempt to test his evidence, he is permitted to say he was half owner of the Tecolota mine without being asked to name the owner of the other half, which is the more suspicious because the witness tells us "*he was not exactly driven*" from his mine, but left because he felt that his life "was insecure there," the hostility to Americans being so intense. But he does not appear to have made any protest or urged any claim for indemnity against Mexico.

The witness claims to know of other companies and of individuals who received the same treatment as La Abra did, *yet claimant did not ask him to name a single one!*

Can appellant object, then, if the court should conclude that this witness, Smith, was only an unfortunate mining adventurer, who, like La Abra,

was driven from his property by *failure and hard necessity*, and also, like La Abra, was *glad enough* to be rid of a profitless investment?

We hear nothing of his coproprietor of the mine, and consequently may conclude that he remained there unmolested, or we should have had evidence on the point.

It was this same Smith who went to New York as agent to sell Del Valle's mines, and whose highly imaginative presentation of the Tayoltita property turned the eyes of New York capitalists eagerly in that direction. This alone is enough to sap his credit.

The next actor in this drama of fraud that claims our attention is George C. Bissell. His deposition (pp. 44, 45) is stuffed with hearsay, and although he lived on the spot he was *absent* when Exall's so-called expulsion occurred. But the only piece of this hearsay that would have been admissible, namely, the particulars of Exall's statement to witness of what occurred on his expulsion from the mines, is *withheld*. What the witness says in that regard is merely this:

> I know Charles H. Exall, said superintendent of La Abra Company, *very well and intimately, and have heard from said Exall his statement as to his expulsion from said company's mines, and I believe the same to be true in every particular*, from the character of said Exall as a gentleman of truth, and also corroborative statements *from others* in that district, at and since the time, as aforesaid, and from *other facts* known to this deponent. (P. 45.)

Could anything be more damaging to the claimant's case than withholding the details on which that most important statement is based? The inference from this undoubted suppression is that such details would have *contradicted* Exall's testimony. But what an opportunity this was to support the tottering Exall by showing that his extra-judicial account of his "expulsion" tallied with his testimony! That the opportunity was not improved, *speaks volumes.*

This witness, therefore, gives an involuntary but powerful support to the case of Mexico.

The trail of the conspiracy is too plainly evident in this deposition to require further comment.

We now come to the deposition of James Granger, sometimes called Santiago Granger (p. 46). This witness was assistant superintendent of the mines under Exall, and, he says, was put in charge of them by Exall when he left there. He testifies remarkably as to the causes that led to the abandonment of the mines. He says:

> The said La Abra Silver Mining Company abandoned their mines, hacienda, stamp mill, and reduction works, in March, 1868. I do not recollect the exact day, and they were forced to abandon said mines, and works, from the interference, hindrances, annoyances, and obstructions they had met with in the prosecution of their mining operations, both in the getting up of the machinery and supplies, on the road, by the military of the Republic, and from the various local authorities, which were such as must have convinced them that they never would be able to carry on their mining operations, with any chance of success. I shall proceed to state *on what facts I found this statement.* (P. 47.)

The witness then proceeds to speak of a number

of occurrences as the premises from which he reached the conclusion that the company was driven from its property, but as he was on the spot when Exall and his *unnamed* American friends and his *unnamed* servant fled for their lives, as alleged, had we not a right to expect from him some account of the crowning act of violence that drove Exall away in headlong flight, leaving him no time to make arrangements for the preservation of the company's property? It will not do for counsel to point to any particular matter in the deposition and say it was such act, *for the witness has not identified anything as that culminating act*, which, we repeat, is remarkable. It at once arouses suspicion to find that so important a fact is left to *inference*.

This witness gave *six depositions*, some on one side and some on the other. In his fourth deposition (p. 119) he says "*that he is not aware that the company abandoned the works on account of the illegal acts of the Mexican authorities.*" To this we add the following extract from his third deposition (p. 112):

> Upon being asked whether he knows that American citizens in the district of San Dimas have not been looked on unfavorably, or that they have been persecuted or threatened with assassination, but whether, on the contrary, they have not been highly esteemed by the people of the country on account of their unselfishness in carrying forward the profitable enterprises that they are in the habit of undertaking among themselves?
>
> He answered and said: That he knows the same to be true.

Even in his first deposition, hostile as it is to Mexico, the witness states an instance of a success-

ful appeal by the company to the justice of the country. He tries, however, to belittle and weaken the force of the circumstance, which only serves to show his intense prejudice. We take the following from the deposition:

> Question No. 15. Did said Guadalupe Soto have a lawsuit with La Abra Silver Mining Company, about the title to property in that district?
>
> Answer. Yes. It was about the "Lower Hacienda," as it was called, which was a part of La Abra property, the same having been denounced by said Soto, as abandoned, while the company was still at Tayoltita, carrying on their mining operations through Superintendent Exall. This, I think, was about January, 1868, or a couple of months before they were compelled to leave. The case was tried at San Dimas, and although it was a case not requiring much knowledge of the law to determine, still the company could get no decision in San Dimas, but the papers were sent up to Durango, the capital, and, as I understand, decided in favor of the company, *but it was a matter of little consequence to the company, as they were soon after driven away and compelled to leave there altogether.* (P. 50.)

In dismissing this witness for the present as entitled to no weight, saving perhaps as to matters otherwise established, we would repeat that he does not say that the mob that *drove* Exall away took the mines and went to work on their own account. Exall's men in buckram seem to have been suddenly and unaccountably diverted from their purpose. Granger remained *unmolested*, and plundered the company without let or hindrance, but did not share the spoils with the howling mob

Matias Avalos gave a deposition for claimant (p. 51), which he subsequently recanted by a deposition

for Mexico (p. 131), and then afterwards repudiated his recantation as supposititious. (P. 93).

When we come to consider the evidences of fraud and irregularity in the preparation of claimant's testimony to be laid before the commission, we think it will appear more probable that the deposition of this witness, given at the instance of Mexico, is his real deposition. Indeed, it bears internal evidence of being such.

But, taking his first deposition as his true one, it does not contribute much support to claimant's case.

The witness says that in the latter part of 1866 an armed mob charged on the company's hacienda, but were frightened off by the preparation made to receive them, and so no harm was done; and that in July, 1867, there was trouble between the company and the authorities, growing out of the company's failure to employ more operatives by working all its mines. But the witness *does not know how that difficulty was settled, although he was an employé of the company.* Certainly, then, these were not the occurrences that drove Exall headlong out of the country.

That the attack on the hacienda occurred in a region so little curbed by law as the district of San Dimas is not to be marveled at, but that it was met with a demonstration that intimidated the assailants is much to be wondered at, if the company was

existing there at the mercy of hostile officials and a hostile population, as Exall would have us believe.

As to the difficulty about the employment of laborers, it will be shown further on that the trouble was, in all probability, brought on by the company's willful disregard of the mining laws of the country.

It may be said at this point that the evidence of this witness and others to show the vaporing talk and threats of inferior Mexican magistrates has little, if any, tendency to prove a state of things that rendered it impossible for La Abra to carry on mining operations. Such bluster, especially from so low a class of men as they are shown to be, is never understood to mean harm. Hence the adage, *threatened men live long.*

The witness John Cole (pp. 55–59) may be introduced as the person who worked the Nuestra Señora de Guadalupe Gold and Silver Mines, situated a mile or so from La Abra's mines, "until interferred with by the authorities and they were compelled to leave there." Our Lady of Guadalupe went before the commission with a claim for $310,832, as indemnity for "*interruption and forced abandonment of mining operations*," and Mr. Cole himself presented a claim to the commission for the enormous amount of $758,437, for "interruption and forced abandonment of farming operations," and was awarded only $71,109.38, *less than one-*

tenth of the amount claimed. The deposition is silent as to these matters.

No doubt Mr. Cole, who was also part owner of the Guadalupe mines, *was mindful of these large claims* when he gave his deposition for La Abra. Especially so when he said, with such unction, "The mules captured from the said company, as aforesaid, were *of the largest and best quality of mules;* they were worth as much money as any mules in that country; 120 of them were so captured, *to his knowledge. I have never known said company to own a poor or bad mule or a poor horse* (p. 58)." He had a very decided interest in swelling the clamor against Mexico, and he yielded to that interest.

This witness tells us that "*all the American companies with which he is acquainted in the district of San Dimas*, excepting only one, have been driven off and compelled to abandon their mines and mining property by the connivance of Mexican authorities." Why were these companies not named? The Guadalupe Company, the only one of them that was named as having been driven off and compelled to abandon its property, set up a monstrous claim which, however, was dismissed. Is Mexico, then, to be condemned for barbarity on the testimony of the promoter of two large claims, which were undisposed of when he testified, and one of which, we now know, must have been grossly exaggerated by fraud?

If Juan Francisco Gamboa's deposition (p. 60) was not almost entirely hearsay, it would be seriously discredited by the fact that he speaks of American mining companies that were driven out of Mexico *without naming one of them.* These ever occurring omissions remind us of the pathetic language of Señor Avila, that "*it has been one of the principal disadvantages at which Mexico has stood before this commission that only the memorials have been known and served there to prepare the defensive evidence*, particularly in cases like the present, where it seems A SPECIAL STUDY HAS BEEN MADE NOT TO PRECISE ANY DATA." (Ex. Doc. No. 103, H. R., 48th Cong., 1st sess., p. 91.) The particular omission now in mind implicates both claimant and witness, and shows the trail of the conspiracy.

We come next to the deposition of William G. S. Clark (pp. 61–64), a citizen of Mexico, who *believed* himself to be English born.

He was a carrier, engaged in transporting machinery and supplies from the port of Mazatlan to La Abra's mines at Tayoltita. He testifies that his trains were frequently stopped and held by the Mexican military until money was lent, and that "*deponent charged his memory with the promises of remuneration for the so-called 'prestamos.'*" (P. 63.)

Further on he says:

> But although deponent was cognizant of many of said forced loans, while he was so engaged in the work of forwarding said

machinery and supplies, still he can not recollect the several sums so exacted and paid, nor the names of the officers of said army who made those exactions, with sufficient certainty to be able to testify on the subject of forced loans, satisfactorily to himself or to said company, except in the cases already named. (P. 63.)

What are we to think of a business man *charging his memory* merely with such transactions, and not pretending that the officials exacting these loans gave, or were even asked to give, any written receipt or promise for the money advanced!

Two instances of forced loans are mentioned particularly by the witness, but as one of them, the case of "Scottie," will be shown presently to be false, the other must be dismissed as unworthy of attention also.

But when one considers that Pedro Echeguren, the rich banker, and his firm, waxed prosperous in spite of *prestamos* (pp. 104, 105), it will not easily be understood how it came about that such exactions contributed to drive Exall and his *unnamed* friends out of the country in a tempest of haste. Nor do we perceive either that the occasional seizure and appropriation of a mule train could have had that effect on Exall and those same *unnamed* friends.

It is an interesting fact that this witness Clark is a friend and neighbor of the witness John Cole. (P. 63.)

Both this deposition and Cole's are long affidavits, *in narrative form*, and the fact that the testimony was not brought out by questioning makes it more

than probable that the affidavits were written by, and are in the language of, some third person, which is always *suspicious*, and recalls an instance where Lord Hardwick, with some warmth, suppressed a deposition because the witness had refreshed her memory as to certain facts from a paper prepared by her solicitor, but founded on contemporaneous *memoranda* made by herself, which paper she afterwards revised and transcribed before using it. (1 Whart. Ev., sec. 523, note 3, and cited by Lord Kenyon in *Doe* v. *Perkins*, 3 T. R., 752.) The probability of a similar practice here will be strengthened when we consider the manner in which the claimant's testimony for the commission was prepared.

We will return to this witness later in the discussion.

James Granger (p. 64) and Francis F. Dana (pp. 65–67) were examined to show that when Alonzo W. Adams appeared at San Dimas with an interpreter, and with witnesses to be examined before the local judge, in behalf of the claimant, there was such an exhibition of hostility by the judge and the populace that an outbreak seemed imminent. Adams thus describes the scene:

> Judge Anastasio Milan did, in effect, refuse to take the depositions of witnesses for claimant at San Dimas, in May, 1870, as stated in the depositions filed in this cause, which were given before Isaac Sisson, United States consul at Mazatlan, by James Granger, May 23, 1870, and by Francis F. Dana, May 27 1870;

and I reaffirm, and make a part of this deposition, all the facts contained in those depositions, which relate to the acts, proceedings, and occurrences by and before said Judge Milan in his court room, in May, 1870, where Aquilino Calderon and Bartolo Rodriguez were there to give their evidence, all of which matters were interpreted to me by said Granger and Dana, or one of them, at the time—and I will add thereto, a few words, according to the best of my recollection—which, on that point, is not easily obliterated; that when said Calderon attempted to testify, there was a crowd of people outside, about the doors and windows of said court room, hooting and yelling, and the court room itself was full of the local authorities and people, whose menacing looks and gesticulations toward said Calderon, said Rodriguez, and myself, were unmistakable, and they were so demonstrative and violent, that even Colonel Dana, who had lived amongst said people so many years, told me I was in personal danger; and the said Judge Milan made no effort to suppress said insulting demonstrations, and by his silence, if not otherwise, encouraged them. (P. 180.)

No such scene as this has been depicted as having occurred anywhere else in Mexico. Certainly, if anything like it had occurred elsewhere, the witness Dana, who was at home there, having been a colonel in the Mexican army, and who lived at Mazatlan, where a good many of claimant's depositions were taken, would have informed us of it.

The extraordinary scene at San Dimas, which is not far from Tayoltita, is, if true, powerful evidence *against* the claimant. In our view, it shows a spontaneous outburst of popular indignation that La Abra's emissaries should dare to be there for the purpose of getting testimony to support a claim which the community knew, or believed, to be, founded in fraud. Feeling, as they did, that testimony for such a purpose must be corrupt, it is not

to be wondered at that the judge and the people did not receive Mr. Adams with open arms.

Granger unconsciously seems to give some support to our theory that it was the known dishonesty of La Abra's claim that caused the disturbance, when he says that the hostility in the district of San Dimas was especially directed to "*the taking of testimony to support the claims of Americans who have been deprived of their mines and property by acts of Mexican citizens and authorities.*" (P. 65.)

However that may be, this occurrence, that took place in May, 1870, is not evidence of official or popular feeling toward La Abra in 1866, 1867, or 1868.

It is certainly extraordinary, if Adams was treated as he says he was by Judge Milan, that on his return to Mexico, in May, 1872, we find one of his interpreters taking a message from Milan to his family, and this same Adams buying supplies for himself and party at Judge Milan's store at San Dimas (p. 184). This reminds us of the *reconciliation* between Exall and Judge Soto.

Another witness, John P. Cryder (pp. 68–70), lived at the very spot, and "was frequently at the hacienda of *said* La Abra Company's works, and *intimately acquainted with Mr. Exall*, superintendent of said Abra Company." Certainly he could have related *circumstantially* the facts of Exall's so-called

precipitate flight *for his life*, be it remembered, but what he says is sadly *meager and disappointing*, to wit:

> When I left Tayoltita, about the last of March, 1868, said La Abra Silver Mining Company no longer had existence in the said district of San Dimas; they were broken up by the interference and molestations of the Mexican authorities in that district, and the capture of their mule trains, provisions, and supplies, by the military authorities of the Republic, while said trains were coming up with said supplies from Mazatlan. (P. 68.)

The witness then goes on to give the particulars of the personal difficulty between Exall and Judge Perez, which, as we have seen, had no more to do with Exall's so-called flight than with Maximilian's invasion. The witness also colors his testimony with some gasconade, which he attributes to Judge Perez and the prefect, Macario Olvera, which, if ever uttered, could hardly have impressed the witness or anyone else as seriously meant. Those who really intend to commit violence do not go about making public declarations of their purpose. What the witness thought of Olvera's vaporing is shown by his remark: "And I told Mr. Exall, *the first time I saw him* after the conversation I have related with said prefect"! Cryder, it will be noted, was Exall's *close friend!*

This deposition is in narrative form, and we strongly suspect was prepared by some agent of the company and is not in the witness's own language, as originally committed to writing. The suspicion is more than justified by what is in evidence as to the methods of the company's agents in *preparing*

depositions, which will be commented on in the sequel.

The witness Jose Maria Loaiza (pp. 71–74), "*miner, muleteer, and merchant*," when he speaks of the prodiguous richness of the mines, makes us marvel *that the claimant preferred a litigated claim before the commission to all that wealth.* The answer to such testimony is simple; the claimant's own conduct shows that it *can not be true.*

This witness testifies extravagantly as to the number of laden mule trains belonging to claimant that were taken and appropriated by the Mexican military authorities.

The untruthfulness of the testimony in the case on this point is clear, as will be shown.

The record shows that men like John Cole, William G. S. Clarke, and the witness himself were doing a thriving business as carriers of everything the mines needed, including the heavy machinery for the 10-stamp mill, and that they were constantly in the service of the company and other companies, and did not complain, as the claimant does, that they were ruined by the repeated captures of their trains. What idiocy, then, it would have been for the company to persist in having pack mules of its own and in doing its own carrying, *with the certainty of loss by capture before it*, when such service could be more satisfactorily rendered by others. It would require a cloud of witnesses

of undoubted credit to substantiate so absurd a theory. That we have no particulars upon which an estimate of the losses of the company on this head could be formed confirms the theory that *no such losses ever occurred.*

The witness, after saying that General Corona captured and kept for the use of the army "many of the mule trains belonging to the said company," states further that "this depredation occurred while Thomas J. Bartholow was superintendent of the company, at the end of 1865 or the beginning of 1866." (P. 72.)

We think the deposition of Pedro Echeguren, claimant's own witness, furnishes an additional ground for disbelieving what Loaiza says about the capture and appropriation of mule trains during the time Bartholow was superintendent. We take the following from Echeguren's deposition:

> Ninth. What do you know about impressments of men, money, and supplies belonging to said company, by the military authorities of this Republic, while the same were on the road between this city and the mines of said company at Tayoltita, at any time between June, 1865, and March, 1868; or of the seizure of said company's money, mule trains, and supplies, as "prestamos," by said military authorities?
>
> Answer. I recollect to have heard from the first superintendent, Gen. Thomas J. Bartholow, of the troubles and difficulties he encountered, soon after they occurred, on the road from this place to Tayoltita, in 1865 and 1866, when attending to the transportation of the company's machinery and supplies, being *continually detained on the road by the said military people*, and that he had to contend with them, and *to pay large amounts of money*, "*prestamos*," *in order to be allowed to go on;* and that these acts were repeated several times on the road, and although I did not witness those acts, they were common during the time referred

to in the question, and those molestations and hindrances, and the losses of this company in that way, were publicly spoken of here, and believed to be true. (P. 104.)

It is hardly possible that Bartholow or the witness would have confounded captures of trains with detentions for the purpose of exacting money. The latter, as we hope to show, had nothing to do with the so-called expulsion of the company.

It is true Bartholow did, in his only deposition, *safely made in rebuttal*, testify that "two entire mule trains loaded with provisions and supplies belonging to said company were captured by the military authorities of the Mexican Republic" (p. 170), but, *if this witness is to be believed at all*, we must be excused for preferring to believe what he said to his banker, Echeguren, *ante litem motam*, and when there was no motive to falsify. If we are not much mistaken, we shall, further on, show this General Bartholow to be far from a reliable witness.

Returning now to the witness Loaiza, we think that he is sufficiently discredited without reference to his own statement that he was *drunk* when he gave his deposition. (P. 295.)

Next comes Charles Bouttier (pp. 74, 75), a French citizen, who had resided in Mexico about sixteen years. He had heard at Mazatlan—it seems to have been proclaimed from the housetops—that La Abra company was to be "*driven out of the mines*," so, *the outlook being thus promising for investors*, he formed

a plan to purchase the property in conjunction with some, *of course unnamed*, gentlemen.

The mines, he says, were rich enough, but the capital necessary to develop them was the obstacle to carrying out the plan with the *unnamed* gentlemen. Aye, there's the rub!

Perhaps Mr. Bouttier, who had filed a claim himself against Mexico for $164,000 as indemnity for the destruction of merchandise by military authority, which was afterwards dismissed, yielded to an improper bias against that Government. But, however that may be, the conduct of La Abra, as shown, is so inconsistent with what this and other witnesses state with regard to the productiveness of these mines that we could not receive their representations as established fact though "all the bishops on the bench" should testify in support of them.

This witness says he has frequently heard "Mexicans boast of having taken a hand in driving away La Abra Silver Mining Company from the mineral district of San Dimas." (P. 74.) Who were those Mexicans, and how did they drive La Abra away?

When the importance of this case is considered, the scantiness of the claimant's evidence, in point of detail, *to which the court's attention can not be too often called*, is reprehensible, and plainly incompatible with good faith, and an affront to the dignity of Mexico.

Mexico, we earnestly submit, is not to be con-

demned on such evidence by a court used to investigate by judicial methods.

And now we have, again, Juan Castillo Del Valle (pp. 77–79), one of the proprietors from whom La Abra purchased. It was to be hoped that, *at this time*, at least, the claimant would ask the witness about the productiveness of the mines during the nineteen years he resided "at the minerales of San Dimas and Tayoltita," and call at the same time, for those books wherein, Bartholow says, "was written down and stated, with particularity, the profits with which they had worked said mines for a number of years preceding said sale, etc." (p. 173); *but no such question was asked* and no such call was made. The only question put on the point was this:

> Seventeenth. State if it be true that the said mines, belonging to La Abra Company, were previously worked with great success by the celebrated Zambrano; and if said mines are mentioned by Baron Von Humboldt, and also in Ward's celebrated work on Mexico; and whether it is publicly well known that the old reducing works and aqueducts there were constructed by the same Zambrano? (P. 79.)

Is not *this alone* enough to condemn the claimant's case, especially when taken in connection with Bartholow's underhand effort to prove that both Del Valle and Manjarez gave glowing accounts of the mines to him and Garth? (P. 173.)

It was not a tribute to the intelligence of the commission to ask Del Valle about what Zambrano did and what Humboldt and Ward said, and *omit to ask him the plain practical question, how much silver*

he got out of the mines per annum during the many years he worked them.

How can this omission to question Del Valle as to the yield of the mines and Bartholow's stealthy attempt to discredit him and his partner be reconciled with honesty in the claim? *It is the confession of fraud* that is always implied from the effort to prove an important fact by inferior evidence when better and more satisfactory is within reach.

Del Valle says, as plainly as language can express it, that "one of the principal reasons" which induced him to sell was the "want of protection experienced in those sparsely populated places, and which are distant from the superior authorities of the State." But Bartholow, thinking, no doubt, that it made against the claimant to have gone and planted itself for a great business purpose in the midst of such surroundings as Del Valle speaks of, tries to put a better face on things by endeavoring to produce the impression that Del Valle's first object was to raise money to enable him to obtain improved mining machinery, with a view to more extensive operations (p. 166), whereas his deposition, *as claimant's own witness*, shows that he had no such purpose at all, and there is not the slightest reason for disbelieving him. Indeed, he had no motive to make a misstatement. William Henry Smith, who went to New York to sell the mines as Del Valle's agent and introduced the property to Bartholow and

Garth, tries to make the same impression. (P. 42.) Here, then, is the trail of the conspiracy again.

As to what Del Valle says touching the treatment of foreigners in Mexico, we need only remark, for the present, that the witness left the district of San Dimas in 1865. Jesus Chavarria, the next witness, (pp. 80–84), and the companion of knaves, as we have shown, at some pains, must be passed as unworthy of attention.

If the witness Marcos Mora (pp. 86–90) had said what were the "*various ways*" in which the political chiefs, Laveaga and Olvera, "*tried to molest*" the claimant company and "*forced them to leave the place*," we should be able to determine whether what was thus done, if done, had a tendency to break up claimant's mining enterprise. But, nevertheless, this witness gives the clamaint's case a serious blow when he says he *never heard anything said* about La Abra being concerned in trying to bring about the annexation of the States of Durango and Sinaloa to the United States, which is extraordinary, *if Exall tells the truth* in saying "the report had become general and we were so harassed that it was impossible to continue our work with safety." (P. 31.)

It is said that this witness was *taken from his prison cell*, where he lay under a heavy accusation of official malfeasance, to confer with the governor of Durango as to La Abra's pretended application for

protection, and he tells us the governor, on his advice, refused the protection asked for. Can a matter of that gravity be determined on the testimony of such men as Exall, Chavarria, and Mora, unsupported by a single document and untested by cross-examination?

But let it be supposed that the claimant's agents were subjected to hostile treatment by petty judicial officers, or even by the governor of the State of Durango; is Mexico to be condemned as having outlawed them, in the absence of any evidence to show that the parties aggrieved appealed, in regular course, for protection to some higher authority empowered to apply a corrective? Is the protection that one nation extends to the citizens of another anything more than freedom of access to the constituted authorities, in common with its own citizens or subjects? It is only where such authorities fail to remedy an *abuse* of official power that an international question arises.

On this point Señor Avila makes the following intelligent observations in supporting his application to the umpire for a rehearing:

> The principles of international law, and the treaties between Mexico and the United States, certainly do not bind the Government of the former to secure to the citizens of the latter residing within its territory that the subordinate authorities will never annoy them, but simply that *they will enjoy the same resources as the native citizens* against all arbitrary acts to their persons and properties.
>
> How can those principles and treaties bind the Mexican Government to guarantee to the American citizens the impecca-

bility of all and every one of the persons constituted in public authority, and that they will understand their duties always and under any circumstances without making any mistake?

We have already cited two of the umpire's decisions that answer this question, and among several others in that direction we will quote the case No. 135, *William J. Blumhardt* v. *Mexico*.

The decision reads:

"The umpire is of opinion that the Mexican Government can not be held responsible for the losses occasioned by the illegal acts of an inferior judicial authority when the complainant has taken no steps *by judicial means* to have punishment inflicted upon the offender and to obtain damages from him. The umpire does not believe that the Government of the United States, or of *any nation in the world, would admit* such a responsibility under the circumstances which appear from the evidence produced on the part of the claimant, showing that Judge Alvarez was the person to blame, and that it was against him that proceedings should have been taken."

So it is admitted that no Government can be held responsible for the errors or illegal acts of its inferior judicial authorities, until all the resources created by law have been exhausted in vain for the punishment of the culpable and the indemnification of the damages; and why is this? Because no Government can be made responsible that all and every one of the persons invested with public authority will always act with rectitude.

If Governments could find persons to place in office exempt from all passions and human weaknesses, and if instead of selecting such persons they should appoint men who, for the very reason of being men, are always subject to commit errors; then only could they be held responsible for the faults committed by their subordinate officers.

And if we admit that neither international law nor existing treaties can hold Mexico responsible for the acts of the inferior judicial authorities, when the judicial resources have not been exhausted, what reason of difference can there be in regard to the inferior political officers, when equal resources can be employed against their arbitrary acts and errors? (Ex. Doc. No. 103, H. R., Forty-eighth Congress, first session, p. 106.)

It was on the ground that the claimants, in case No. 374, on the docket of the commission, had not exhausted their remedies under the Mexican law, that the umpire denied their right to invoke the remedy provided by the treaty of July 4, 1868.

In declining to pass on the merits of the case, the umpire said:

> The umpire does not feel himself called upon to decide whether the above-mentioned sentence was just or not. If the claimants considered that it was not so, *they failed in their duty* in not appealing to a higher court against the conduct of an inferior judge, *with a view to his punishment and to the recovery of the damages;* but they appear to have taken no steps whatever, either themselves or through their agent, to *avail themselves of the resources open to them.* * * *
>
> The umpire does not conceive that *any government can thus be made responsible for the misconduct of an inferior judicial officer* when no attempt whatever has been made to obtain justice from a *higher court.* (Cited by Avila, *ib.*, p. 103.)

In the case of Alfred Green, No. 776, on the docket of the commission, the claimant, like Exall, complained of false imprisonment in San Dimas and of hostility from the local authorities, but the umpire would not recognize his claim for the following reason:

> If the judge illegally imprisoned the claimant, *it was certainly in his power to appeal to a higher court,* and to sue Judge Perez for false imprisonment. It is shown that he was at Durango shortly after his imprisonment, and that *he had a lawyer there.* Nothing could have been more easy for him than to seek his remedy *through the courts.* But it does not appear that he took any steps in *that direction.* (Cited by Avila, *ib.*, p. 105.)

On precisely the same principle it was, seemingly, the umpire's duty to dismiss La Abra's case without attention to the merits, but for some reason he concluded, upon the say-so of Exall and his "*lawyer of high character,*" *unsupported by a single document,* that every reasonable effort had been made to secure protection from the Mexican authorities. Is it not

clear, we repeat, that conclusive evidence of the refusal of those authorities to furnish protection should have been required before passing judgment against Mexico?

Could La Abra have had a doubt that President Juarez, so friendly to Americans, would exert his utmost power to protect its interests? Its failure and Exall's failure to appeal to him for redress and protection is one of the many enigmas of the claimant's case, if founded in fact. It is almost as remarkable as the failure to invoke the protection of the minister of the United States, or some consul, in Mexico, to say nothing of the home Government at Washington.

It should be remarked, in dismissing Marcos Mora, that he does not hesitate to deny flatly several things imputed to him by *that great man of law*, Chavarria.

We come now to the witness, Capt. Charles B. Dahlgren. This gentleman is a son of the late Admiral Dahlgren, U. S. N. He is a mining engineer of experience, and the author of a book called "Historic Mines of Mexico."

He was the victim of an audacious fraud, practiced by Alonzo W. Adams, agent of appellant to collect testimony, assisted by Isaac Sisson, then United States consul at Mazatlan, Mexico, and others. These parties concocted and palmed off on the Joint Commission a deposition which Dahlgren never gave

(pp. 95–100). The way in which this plot was carried out is set forth, with particularity, in a subsequent part of this brief, and need not be gone into now.

Captain Dahlgren was examined, at great length, before the Foreign Relations Committee of the Senate with reference to the supposititious deposition. He denied much that he is made to say there favorable to the appellants' case, and made some statements that contribute support to the theory that appellant stopped working its mines because it was a losing business to carry them on. (See extract from his deposition in Appendix C.)

RECKLESSNESS AND MISMANAGEMENT.

La Abra's adventure was entered upon with the recklessness of men who had "Eaten on the insane root that takes the reason prisoner."

It was nothing less than an invitation to disaster to send down into Mexico Bartholow, *the banker*, and Garth, *the tobacco manufacturer*, with *carte blanche* to buy silver mines, a species of property with which neither of them had any acquaintance whatever, as Garth himself testifies. A better instance of a fool's errand than this mission can not be readily imagined.

During their brief stay in Mexico these blind emissaries bought and paid for the mines now in question, sinking their own and their friends' money

on their judgment touching matters wholly unfamiliar to them.

Garth never had seen so much silver as was piled up at Del Valle's (p. 722); but the witness Agasito Arnold tells the story better. He says:

> That it was also a matter of *public notoriety*, that the profits derived by Castillo from this business, were of small account; that deponent believes what was publicly said, that the Americans deceived themselves in regard to these mines, because, when they sought to make their purchase, *they saw at the establishment of Castillo, in Tayoltita, a considerable quantity of silver*, which proceeded from the small yield he obtained, and *the remainder, from what he had purchased at these mines, and from Gavilanes.* (P. 144.)

The *mere sight* of so much silver set the two on fire to buy.

The history of this delusion is given, with point and clearness, in the argument of Mr. John W. Foster, in the Court of Claims (pp. 8–20), which is filed as part of the brief for the United States, and will be found of value to the court, should it come to an investigation of the facts on this appeal.

From the beginning to the end of the enterprise was one unbroken reign of incompetency and mismanagement.

Garth, who was treasurer of the company and its sole channel of communication with the mines during the period covered by this claim, frankly admits, in his deposition, that the enterprise was wrecked by incompetency:

> Question. I think you said in your examination before the Senate committee that you thought things would have gone

much better if somebody had been in charge of that enterprise who knew something about it, did you not?

Answer. I think so still.

Question. I thought I recollected something to that effect.

Answer. And I think so still. (P. 733.)

He concedes the incompetency of De Lagñel, and that his successor, Exall, was sent down to the mines "to aid De Lagñel *as an accountant or as an attendant in the store for goods to be sold and bought," and not as a "metallurgist" or "miner."* Knowing all this, and that the incompetent Exall was left in charge, as superintendent, by De Lagñel, things were, nevertheless, allowed "*to go along in the same old way*," and the intention to appoint a man "qualified to fill the superintendency of the mine" was never carried out (p. 723). It is not easy to assign a reason for this neglect of the interests of the company, especially when we consider that De Lagñel wrote Garth, in October, 1866, that he would not remain at the mines "longer than next 1st March," and that "no money could tempt" him to do so. (P. 248.) This warning was repeated in a subsequent letter, dated January 5, 1867. (P. 258.)

De Lagñel, who succeeded Bartholow as superintendent, and whose testimony was purposely withheld from the Joint Commission by claimant, as we shall presently show, had been in the Regular Army, as lieutenant of artillery, from 1847 to 1861, when he entered the Confederate military service, where he remained until 1865. Being in search of employment, a friend introduced him to Garth and

Mr. Hearn, then president of the company. De Lagñel shall tell the rest:

> I told them what I had been, and I told them at the same time that *I had no practical knowledge of mining, and that I was not skilled, and doubted my competency to go, and went reluctantly.* My friend insisted upon my going, and I accepted it *under dire pressure of necessity*, I will say. (P. 491.)

He went to the mines early in 1866, but resigned and was back again in New York in May, 1867. Meanwhile, however, he wrote Garth to come down there to his assistance, because he felt that he "was unequal to the charge," and "did not care to have anyone's interest" in his hands "to their injury" (p. 507). When asked what induced this feeling on his part, he replied:

> I suppose the feeling that everybody has *who feels himself in a false position. My idea was that an expert, a man well versed in the business*, should be there. There was too much at stake, too much at interest, *and I felt that I was not equal to it*, and therefore I asked him to come down and look at the condition of things himself, and if he saw fit to either take charge himself *or put some fitting person in charge.* (P. 507.)

To sum the matter up, his desire was, he said, "*to escape from a false position.*" (P. 508.) The poor man finding, after he got to Tayoltita, "*that it required a degree of knowledge that I* [*he*] *did not possess*" (p. 508), became oppressed by a sense of utter incompetency for the business he had entered upon "*under dire pressure of necessity*" and under the insistence of the friend who had introduced him to the company, and who, we fear, had begun to tire of looking up occupation for him.

But, to make the matter worse, De Lagñel says that *those under him did not possess the knowledge he lacked!*

Need we go a step further in search of the cause of the Company's disaster? (P. 508.)

In the face of all this, Exall, who describes himself in one deposition as "*merchant*" and in the other as "*cashier*," testified, in *rebuttal*, in 1874, that he and De Lagñel were educated, experienced mining engineers. Supposing that all danger of De Lagñel's appearance on the scene had vanished with the closing of the evidence for the defense, and that the case would soon be in the hands of the Joint Commission for final action, Exall had the hardihood to swear:

> Previous to becoming such superintendent, both *Colonel de Lagñel and myself had each of us several years' experience in silver mining, and thoroughly understood the business practically; each of us also understood it scientifically, having studied the art of all kinds of silver and gold mining.* The work done by both De Lagñel and myself was done properly, and strictly in accordance with Mexican law and the usages of the mining district, in which the company's mines and works were situate, and the expenditures were judiciously and economically made. (P. 150.)

Bartholow testifies to the same effect and with the same reckless disregard of truth:

> Question 12. Is it true, as stated by one of the witnesses for defense, in substance, that the Americans sent to Tayoltita, to direct said mining operations, were ignorant of their business, and that they went to work at the same improperly, and without observing the laws and usages governing such mining operations?
>
> Answer. No, it is not true in any sense, for *the superintend-*

ents and subordinate officers of the Abra Company *were qualified for their positions, both by a knowledge of the science and practice of such mining operations;* and said works, while I was superintendent, were conducted properly, skillfully, and lawfully, and in strict accordance with the usages of such mining operations, by machinery and other modern appliances, such as we introduced there. (P. 171.)

And Collins, the president of the company, the tea merchant, the vestryman, whose *high character* is much paraded, he, who knew as much about the affairs of the company as Garth himself (p. 718), swore that the company had "*full confidence*" in superintendents whom he knew to be wholly incompetent. But let his deposition speak:

Question 13. Jesus Torres and Francisco Acosta, in their testimony given at Durango, in this cause, before Geronimo Lido, juez de paz, severally say, in terms or substance, that the company sent a commissioner or agent to Mexico to examine into the enterprise. Say whether this statement is true or not?

Answer. It is not true. Before the company was formed, Thomas J. Bartholow and David J. Garth, on behalf of themselves and the other gentlemen who subsequently formed the company, went to Mexico to examine and purchase the mines, but the company never sent out any commissioner, and had no occasion to do so. It had full confidence in its superintendents. (P. 148.)

Is it rash or uncharitable to say that here is grouped perjury enough to sink the whole case?

In view of the fact that Exall swears that mines which cost the company only $50,000 would have yielded, up to December, 1869, the net sum of at least one and a half millions of dollars but for the "interferences and molestations" of the authorities (p. 33), and in view of the fact that the company preferred to file a claim for damages before the com-

mission to asserting its property rights in the mines themselves, and elected to abandon all its property, real and personal, to any fate that might befall it, repudiating the authority of James Granger or anybody else to represent it after Exall's so-called flight, and in view of the fact that although Exall testifies that "early in 1868" he got $17,000 from 20 tons of ore, yet had to borrow $250 from Peña, in Mazatlan, when he reached there a so-called fugitive in March, 1868, we feel prepared to receive, without question, the testimony adduced by Mexico to show that it was the unskillfulness of the company's agents, added to the poverty of the mines, that caused La Abra's abandonment of the enterprise, because that testimony is the natural and the only solution of the otherwise inexplicable difficulties of the claimant's case.

The testimony of Don Ygnacio Manjarrez, who was part owner with Del Valle of the mines purchased by the company, *but not called by it as a witness*, be it observed, comes with irresistible force. He says:

> That said mines may have been rich formerly, but not in hands of this company, because their workings did not show such to be the fact. (P. 121.)

Again he says:

> The Americans abandoned their works, because they could not make them produce silver, and not because the Mexicans run them off, for they enjoyed all necessary security, in a higher degree than the Mexicans themselves; that in regard to the hostility which the claimants allege was manifested by the Mexi-

cans toward them, it is false, and I repeat that they left on account of the business in which they had engaged. (P. 121.)

Further on he says:

The only enemy they had in Mexico is found in that they could not succeed in getting silver out of the *tepetates* which this company took out of the mines. (P. 121.)

We have already seen what Del Valle says about the yield of the mines. (P. 139.) His testimony is greatly emphasized by the fact that, although examined by claimant *as to other matters*, he was not asked to testify with regard to the productiveness of the mines, while at the same time however, as we have seen, an underhand attempt was made by claimant to produce the impression that the witness and his partner had made great representations as to the yield of the mines when the negotiations for the sale were going on. (See Bartholow's dep., p. 173.)

But if Del Valle or his partner had made the representations which Bartholow attributes to them, *we may be sure Garth would have mentioned the fact in his testimony.*

It is noticeable, furthermore, that the claimant has made no attempt to asperse or disparage either of these witnesses, and a moment's reflection will show that they had no motive to digress a hair's breadth from the right line of truth. Standing thus fair, we feel sure the court will allow their evidence the weight we think it deserves.

Certainly the testimony of Del Valle and Ygnacio Manjarrez prepares us to accept that of the latter's brother, Cepomuceno, who says:

> That he does not know the quantity of ore which is obtained monthly at that establishment; that Castillo made regular profits, in some of them, and in others he lost money, according to the costs of labor at the mines, and finally, *that through economy, he kept up his business for ten years, owing to the excellence of his management, which enabled him to preserve it in good condition;* that the Americans may possibly have been led into error in regard to their purchase, *in consequence of the excitement which prevailed at the time on the subject of mining.* (P. 145.)

Surely, when Garth tells us that it was *incompetency alone in the company's superintendents* that caused the failure of the enterprise, it is not difficult to credit the statement of the witness Rodriguez that "*the Americans who have come here are incapable of mining it except at great expense*" (p. 114), and that of the witness Leandro Molino, who says that the company's superintendents "*have not been capable to have charge of haciendas and mines.*" (P. 117.) In addition to these witnesses, Nuñez declares that "*no one*" of the people sent by the company to work the mines "*understood such business*" (p. 118); and Julian Romero says, referring to the company, that "those whom they sent to take charge of their business *were incompetent to do so*" (p. 119); and Miguel Laveaga deposes that these mining operations "were not carried on in the ordinary way, or as is the practice in general," but, as we shall presently see, upon a novel plan, adopted in utter disregard of

customs of the country founded on wide experience (p. 143); and to what Laveaga says must be added the similar testimony of Emilio Contreras, who declares "that he knew from what he heard publicly stated that the works begun in Tayoltita by the Americans were not conducted by them, *not* [*sic*] even with regard to the most ordinary and practiced customs" (p. 142); and Jesus Torres and Francisco Acosta, the former an attorney and the latter a merchant, of Durango, both say that those Abra adventurers "*did not go to work in the mines in a regular way, but rather failed to observe the smallest details usually taken into account in the working of mines*" (p. 137).

All these witnesses and Garth, the treasurer of the company and the channel of communication between it and the mines, being agreed that it was the incompetency of the company's agents that brought disaster on it, we do not well see how the point can be disputed.

What Exall and Bartholow say to the contrary is not worthy of a moment's consideration, for, as we have seen, the credit of those witnesses is entirely overthrown, and no court of justice would think of making anything they have said that has not good extraneous support the basis of judicial action. The only safe course in such cases is to enforce the principle, *falsus in uno falsus in omnibus*, and reject their testimony entirely. In his elegant and philosophical

treatise on evidence Mr. Starkie thus lays down the rationale of the rule:

> As the credit due to a witness is founded in the first instance on general experience of human veracity, it follows, that a witness *who gives false testimony as to one particular, can not be credited as to any*, according to the legal maxim, *falsum in uno, falsum in omnibus*. The presumption that the witness will declare the truth *ceases as soon as it manifestly appears that he is capable of perjury*. Faith in a witness's testimony *can not be partial or fractional;* where any material fact rests on his testimony, the degree of credit due to him must be ascertained, and according to the result, his testimony is to be credited or rejected. (Vol. 1, Part III, Sec. LXXXVII.)

As further reflecting on Bartholow's credit, we may refer at this point to De Lagñel's surprise, on taking charge of the mines as Bartholow's successor, to find a debt there of between $20,000 and $30,000, of which Garth, the treasurer of the company, knew absolutely nothing. (P. 505.)

THE PERSECUTION THEORY.

Garth tells us that he and Bartholow were about three weeks together at the mines making investigations, with a view to becoming purchasers (p. 721), and it is reasonable to suppose that if the American mining companies already established in the district of San Dimas were living under the terrorism which, it is claimed, eventually drove all of them away but the Durango Company, Garth and Bartholow would have heard of and seen this alarming condition of things and quickly abandoned the idea of investing in such a country. To suppose that of all the suf-

fering Americans in San Dimas there was none to warn his fellow-countrymen of danger, *if danger there had been*, would be absurd.

In the nature of things there was some lawlessness about Tayoltita, growing out of the rough character of the population and the distance of that region from any seat of superior authority. Indeed, Del Valle had suffered from this lawlessness, and after living nineteen years in the San Dimas district desired to sell out and get away from it. Del Valle was a *Spaniard*, but it is not intimated anywhere that enmity on account of his nationality had anything to do with the condition of things of which he complained. It further appears that the lawlessness in question was only occasional and by no means the rule, as must be inferred from what Garth and others tell us of the *quantity of silver piled up at Del Valle's.* (P. 722.) Indeed, the only instance of lawlessness given by Del Valle is when the town of San Dimas "*mutinied*," as he says, against him in the year 1856.

Although a civil war was going forward in Mexico and the country was unsettled by it, it is scarcely reasonable to suppose that the situation was at all alarming in San Dimas during the three weeks the tobacconist and banker were engaged in testing ores, or they would not have started an enterprise there that was certain to entail a heavy expenditure of money, unless the court is prepared to adopt the

theory that La Abra's story must be accepted in the teeth of its gross improbabilities. Indeed, Garth tells us in his deposition that in crossing from Mazatlan to Tayoltita, a distance of 150 miles, he saw no appearance of war or commotion. (P. 721.)

It is a fact, then, of *immense significance*, that Garth and Bartholow, after spending about three weeks at Tayoltita, deliberately started the enterprise there, and that Bartholow posted off to San Francisco to secure the improved, expensive machinery which was to revolutionize silver mining in San Dimas, and which *the two incompetents* had determined to introduce on their own responsibility.

These facts alone are sufficient to overthrow the persecution theory, but there are *others*, whose tendency is strongly in the same direction, to which the court's attention will next be invited.

It savors of the ludicrous to hear this cry of persecution from a company that dared to go into Mexico, when that country was riven by intestine war, when public authority was relaxed and society —— in a somewhat feverish, turbulent condition, and establish itself at Tayoltita, in a region distant from any seat of superior power, among an illiterate, narrow, and provincial people, clinging tenaciously to old-established customs and methods, as such people do the world over, and there boldly commence to put in operation revolutionary ideas on the subject of beneficiating silver ores, and to

that end begin large and expensive preparations, which were regarded as a menace rather than a blessing by the simple native population.

Without waiting until its new plant for beneficiating ores was ready for operation, claimant destroyed the old reduction works, which were the dependence of the small miners in and around Tayoltita, in the absence of any necessity whatever, since the new works, as originally planned, were to occupy an adjoining site, and thereby caused great public inconvenience and dissatisfaction, as may be imagined, when it is understood that the nearest point to that place for beneficiating ores was the town of San Dimas, some miles off, to which, however, they could not be taken with profit on account of the expense of transportation.

Exall tells us that "it was only *just before said abandonment* that the company's mill, machinery, and other works were completed and in readiness for active and perfect crushing and beneficiation of ores," etc. (P. 156.) And it can be readily perceived how this improvident, inconsiderate, and we may say *hostile*, action of the company put a stop to mining operations about Tayoltita. As mining is pretty much the only occupation of the people there, this action of the company was like destroying the only gristmill in a country neighborhood here and compelling the people to wait an indefinite time until another mill, on some new and strange plan,

should be constructed, leaving them to consume their grain unground in the meanwhile. Indeed, these people soon discovered that Abra's agents were smatterers and pretenders, as we know they were, in so far, at least, as silver mining was concerned, and, consequently, there was nothing reassuring or quieting in their promises to furnish something better in the room of the reduction plant they had so recklessly destroyed.

And not only so, but we shall see that this so-styled *hunted and persecuted* company was even bold enough to disregard the mining laws and regulations of the country to such an extent as to create general alarm and require the interference of the local authorities. This conduct of the company's agents might well have been regarded by those authorities as an attempt to make peons of the laborers in the company's employment, to prevent which abuse labor in Mexico is subject to governmental supervision. Peonage is a rudiment of slavery which it was hard to prevent, owing, no doubt, to the ignorant and dependent condition of the laboring population of the mining districts of Mexico. It was found necessary in this country to extend a like protection to the emancipated negroes of the South against similar abuses by amending the Federal Constitution, so as to place them, in certain respects, under the guardian care of the General Government.

Let us now see what the witnesses say about the

destruction of the old reducing works, constructed at much expense by Del Valle, and the public inconveniences that followed.

Bartolo Rodriguez, a miner by occupation, was asked—

> Whether it is true that on account of the hacienda for beneficiating ore according to Mexican custom, in Tayoltita, having been destroyed by the Americans, happened their own destruction, *and was also the cause of the ruin and almost entire suspension of said mineral district*, for the reason that, such being the case, *the miners who otherwise might have worked some of the mines do not find it profitable to pay for the transportation of ores to the haciendas of this place* [San Dimas]?

To this question he gave an affirmative answer. (P. 109.) Another witness, Refugio Fonseca, in answering this same interrogatory, says "that all that is stated in this interrogatory is true, *so much so that nobody is left in this mineral district of Tayoltita.*" (P. 111.)

Another witness, Ramon Aguirre, says:

> That the Americans, on account of having destroyed the haciendas for beneficiation, in accordance with Mexican custom, *brought ruin upon themselves, and almost succeeded in suspending mining operations entirely in the said mineral district, for the reason that those miners who could otherwise have worked some of the mines* could not make it pay to transport their ores to the haciendas in this place [San Dimas]. (P. 110.)

Bartolo Rodriguez was again examined by Mexico, and after stating that the company had destroyed the hacienda for beneficiating ores which had been left "in good repair" by the former owners of the mine, goes on to say:

> That in consequence of this demolition of the hacienda of Tayoltita, formerly belonging to Castillo, by the Americans

the town of Tayoltita has been almost entirely abandoned, for to those who would like to carry on mining it would not be profitable to remove their ores to San Dimas for beneficiation. (P. 114.)

These witnesses are confirmed by De Lagñel, who says, of the old mill, that it "was torn down and broken up; the wheel had disappeared; I don't know what had become of it. The arastras were all torn out." (P. 485.)

He relates that the new mill had been on the ground "in detached pieces" *for some time before his arrival*, that it was a *year after his arrival before the new mill went into operation*, and, furthermore, that if the old mill had not been destroyed, *the company could have reduced ores during the time the new machinery was being put in place.* (*Ibidem.*)

Indeed, Exall himself says that the plant at the hacienda for beneficiating ores was completely dismantled (p. 151) (which is, no doubt, what the witnesses mean when they speak of the destruction of the hacienda for beneficiation), and that the new plant for that purpose was not ready for operation until just before he abandoned the mines. (Pp. 151 and 156.)

He states, with reference to the destruction of the old plant, as follows:

The machinery and fixtures removed were of the simplest kind, old fashioned, much worn and completely out of use, *except by Mexicans*, who work mines and crush ores on a small scale by arrastrars, or the old "Patio process," and the reduction and beneficiation of ores by them was slow and imperfect, and their working capacity very limited, and were inadequate for the work prosecuted on the scale contemplated by this company. (P. 151.)

It provokes a smile to see the lordly contempt with which this sciolist and pretender affects to regard the witnesses who shared the common opinion that success in mining silver could not be reached without experience and observation and due attention to the methods and customs of the country as well as of science. He thus refers to them:

> They were wholly ignorant of modern mills and machinery, and, in fact, of any process for the crushing and beneficiation of ores, other than by the common Mexican patio process, which is out of use and entirely unsuited to large operations, like those of said Abra Company, at Tayoltita. (P. 151.)

This is, indeed, dogmatic language to come from such a source.

It would appear from Ward's book on Mexico, which is quoted from by the witnesses W. H. Smith, Bartholow, and Cole, that La Abra's ill-starred adventure in silver mining was but a repetition of others that had been made before in this same mineral district of San Dimas. We ask the court's attention to the following extracts from the second volume of that work:

> In every other commercial enterprise *some previous acquaintance with the subject* might have been thought necessary; but the mines were to be an exception to all ordinary rules, and on the principle, I suppose, of taking *omne ignotum pro magnifico*, vast sums were embarked in schemes of which the very persons who staked their all upon the result know literally nothing except the name.
>
> P. 75: "Nine-tenths of those who engaged in the arduous task did so under the conviction that *water* was the only obstacle which they had to overcome, and that the possibility of surmounting this by the aid of English machinery was unquestionable. * * * *The practical experience of the native miners was underrated; their machinery condemned, without any pre-*

vious inquiry as to its powers or the different degrees of perfection which it had attained in the different districts. Gradual improvement was pronounced too sluggish a process, and Cornwall was drained of half its population in order to substitute an entirely new method for that which had been endeared to the Mexicans by the experience of three centuries. The total failure of this attempt was the natural consequence of the want of consideration with which it was made." * * *

P. 77: "The Anglo-Mexican Company alone had expended in September, 1826, nearly £30,000 in salaries to men, almost all of whom have now been dismissed, and full £100,000 in machinery (including duties and carriage from the coast), not one-twentieth part of which either has been or ever can be made use of, the machinery of the country having been found fully adequate for the drainage of their mines."

Pp. 80, 81: "In general the selection of mines among the first adventurers, was determined by a reference to Humboldt. * * * Humboldt never asserted, or meant to assert, that a mine, because it was highly productive in 1802, must be equally so in 1824. * * * Unfortunately, the consequence of these statements was to direct the attention of the world exclusively to spots which, from the enormous quantity of mineral wealth that they have already yielded, may fairly be supposed *to have seen their best days.*" (Quoted, Ex. Doc. No. 103, H. R., 48th Cong., 1st sess., p. 277.)

If what is said by this author about the rash inattentiveness of former adventurers to local methods and opinions had been written to account for La Abra's failure it could not be more applicable.

It seems equally clear from the evidence that the company not only looked down upon local opinion and custom, but that it operated its mines in defiance of law and with little respect for the contract rights of its employés.

What a world of meaning there is in the witness Sloan's account of the difficulty between Exall and Judge Perez where he says that the trouble grew out of the fact that "the judge went into the haci-

enda to speak to one of the PEONS who was at work there." (P. 120.) *Yes; in the very teeth of the law and policy of Mexico, La Abra, the hunted, the persecuted La Abra, would have its* PEONS!

The witness Victoriano Sandoval says:

> That he, the deponent, being a miner in the mines of said company, the superintendent ordered him to procure people to do the work, promising to pay them all cash for their work, which they did day and night. That in a short time they declined to perform this obligation, promising to pay them 10 shillings per day, (reales), in current money, from 6 in the morning till 6 in the evening. This they refused again to do, and offered to pay them one-half in money and one-half in goods; and shortly after they repeated their refusal to carry out their promises. Then they were summoned to appear before the authorities, and it was agreed that they should pay a third part in money; at the expiration of a few days, even this they failed to comply with, which gave rise to new complaints before the authority, and said authority demanded that they should comply with their obligations, but without resorting to any violent measures or attacks upon property; that this is all he can say with truth. (P. 131.)

Another witness, Aquilino Calderon, states:

> That what he knew was that those of the company having failed to carry out their contract to pay, as they had pledged their word to do at various times, the workmen exacted what was their due, refusing to work until what had been agreed upon was paid to them; and in consequence of this unanimity, they deemed wrong that the deponent should have gone out to work at the mine, and they ordered him away from the mine of Del Cristo, where he held the position of crusher. (P. 133.)

The personal incident to which this witness refers, and of which it is attempted on claimant's part to make capital (see Exall's dep., p. 154), amounts simply to this, that witness was regarded and treated by his fellow-miners as a traitor, a "scab," in going to work while "the strike was on."

But this defiant bearing of the company having been carried to such length as to hurt seriously the staple industry of the people and threaten the public peace, the local authorities charged, it must be presumed, with the supervision of mining operations by the laws of Mexico were compelled to interfere.

The following documents, emanating from those authorities and evoked by repeated complaints against La Abra from its ill-used and oppressed employés, we give in full, as proof of the absurdity of the cry of persecution raised by this *peon-loving* company.

They are marked, respectively, Exhibits V, W, X, and Y (p. 54), and here arranged in proper chronological order:

EXHIBIT Y.

GEFETURA POLÍTICO OF THE PARTIDO OF SAN DIMAS.

To Judge Guadalupe Soto, Sole Conciliador, at Tayoltita:

From your communication, this Gefetura has learned, with great displeasure, the abuses committed by these Americans, *who at first agreed to pay their operatives in money, then to pay them half and half, and thirdly to pay them one-third.* Notify them through your court, and by my order, to *at least comply with the last contract*, that is, to pay them one-third in money, otherwise that they vacate the mines, and allow the operatives to work them as they can, since *neither the mining ordinances permit them to pay in goods only, nor will the Government consent to such abuses, and it is already tired out with the thousand complaints upon this subject.*

You will show this communication to the American in charge in that mineral.

Independence and reform.

M. MORA.

SAN DIMAS, *June* [*July?*] *3d, 1867.*

EXHIBIT V.

2D COURT CONCILIADOR, }
TAYOLTITA. }

To the Superintendent of the Abra Reducing Works:

By the communication of yesterday, dated the 3d, received from the gefe politico of San Dimas, I notify you that if you do not intend to work the Abra mines as they were formerly worked, *upon the system of "thirds,"* that you immediately vacate the mines, to allow the operatives to work them on their own account, without further loss of time.

Liberty and reform. Tayoltita, July 4th, 1867.

GUADALUPE SOTO.

EXHIBIT W.

2D COURT CONCILIADOR, }
TAYOLTITA. }

To the Superintendent of the Abra Reducing Works:

The court notices, with the greatest displeasure, that twenty-four hours have elapsed since it addressed you a communication, to which you have made no reply. You are ordered *to arrange your work with the operatives* within two hours; and if you come to no arrangement, you will vacate the mines, so that they may lose no more time.

Liberty and reform. Tayoltita, July 5, 1867.

GUADALUPE SOTO.

EXHIBIT X.

GEFETURA POLITICO }
OF SAN DIMAS. }

To the Representatives of the Mines, Tayoltita:

The Gefetura, being informed that you have stopped the mines in that mineral, informs you that this is not the engagement you entered into with me, and that it hence believes that you place no value upon your word. *Nevertheless, if you don't choose to continue your work, give the people permission to collect ores in the mines, as I will not hold myself responsible for the consequences, in a town where the people are without work.*

Independence and reform.

San Dimas, July 10, 1867.

M. MORA.

This communication was followed the next day by a reply:

TAYOLTITA, *July 11, 1867.*

To the Political Chief of San Dimas:

DEAR SIR: Your letter of the 10th instant was received last evening, and from its contents I thought that no answer was

expected, *and I had no intention to reply to it.* This morning I was advised that the answer was expected by you. In respect to the *compromise* of which you spoke, it was made while *I was in Mazatlan*, to last until I should return, and then I was to arrange with you as best I could. And if you had known the circumstances and causes which led to the paralyzation of the works it would have been apparent to you that it was not possible to do otherwise. *I have offered to the operatives all the mines, to be worked on shares by the carga, and some are already at work, and desiring that with this there may be the most friendly understanding about the affair,*

I am, your most humble servant,

CHARLES H. EXALL,
Supt. La Abra S. M. Co.

(P. 267.)

It should be said at this point that Guadalupe Soto, who describes himself, by the way, as "*a tailor of this neighborhood*," and is the author of two of the above-given documents, says in his deposition (p. 129) that—

> The communications which he issued were in consequence of the fact, that besides the disturbance on the part of the people, he had received orders to that effect from the political chief, Marcos Mora; *all in consequence of the failure of the superintendent to contract with the operatives for working the mines.*

He also says that he issued the communications in question because "*there had been a rising of the people to compel him to*" (p. 129), in which words there is pregnant testimony against the company, for men do not generally quarrel with their bread and butter without a grievance of some kind.

These official papers showing the action of the political chief, Mora, and the local judge, Soto, have been discussed by appellant's counsel without reference to the facts to which they belong. They have been taken out of the context of events in which

they have a place and appealed to as proof of an aggressive movement on the part of the constituted authorities, whereas they show *the reverse to have been the case*, especially when read in the light of those events.

Looking now at these papers in the light of the surrounding circumstances, it is apparent that the trouble with the authorities was brought about by the persistent effort to run the mines on the profits of the company's supply store, and, as part of the plan, make the operatives take less and less cash and more and more merchandise, and finally *all merchandise*, as the company became more and more crippled financially.

The correspondence in the letter book shows what an important part the store played in the conduct of the enterprise. In a letter dated March 7, 1866 (p. 210), Bartholow, the first superintendent, refers to it in these terms:

> Our sales range from $80 to $100 per day cash, besides what we sell to our employees, which is charged on the books. The store under good management will, I think, yield a net profit of twenty thousand dollars per annum, but it requires close and constant attention, for the reason that these people buy everything of general consumption in very small quantities, usually from 3c. to 6¼c. at a time. I have seen women stand at the counter and make three purchases of cheese of 3c. each; they do this under the impression that they get more in the aggregate by buying in such small quantities; yet when they come to purchase a dress, a rebozo, or shawl, they will cheerfully pay the highest price if they have the money, and rarely complain of the prices asked. Our staple goods and provisions yield a profit of at least 50 per cent., and fancy dry goods from 60 to 100 per cent., and the most difficult task I have now is to keep an ample supply on hand to meet the demand. (P. 211.)

And in another letter from the same to the same, dated April 10, 1866 (p. 219), occurs the following:

> Our store is doing an excellent business. Our goods and supplies pay liberal profits, and I am confident when our mill and buildings are completed and our mining and mill work systematized as it should be, the store if kept well supplied *will run the entire concern, thus reducing the cost of our labor about fifty per cent.* (P. 220.)

In a letter of August 16, 1866, to Garth (p. 239), De Lagnel, Bartholow's successor, says:

> When I arrived in Tayoltita, the payments were made mostly *in cash*. After the first month I reduced it to *one-half* and the next to one-third cash, and rest in goods.

Again he says, writing to Garth, January 5, 1867: "As those employed by me receive *two-thirds* of their earnings in goods, they have no great need to purchase more."

Following the company in its downward course, we find in the letter book a letter from Exall to Garth dated July 13, 1867 (p. 271), in which the writer states that, shortly before, he had "reduced the cash payment from one-third to ——," something which is illegible in the letterpress copy, but which is plainly either *still less cash* or, more probably, *all merchandise.*

It was to put a stop to the abuse of grinding down the operatives in order to build up the supply store, about which a "thousand complaints" had gone up to Mora, that he interfered on the side of humanity and against corporate greed and oppression.

De Lagñel's letter of August 16, just quoted, shows that Mora in his communication of July 3, 1867 (Exhibit Y), was strictly correct in stating that the company "first agreed to pay their operatives in money, then to pay them half and half, and thirdly to pay them one-third," and Exall's letter of July 13, although not legible as to a word or two, *compels the conclusion* that the company had reached the tyrannical pass of requiring its operatives to accept goods only in payment.

A point, therefore, had been reached where the reserved authority of Government incident to mining concessions should be brought into operation to curb this arrogant and despotic corporation; and, when we consider the provocation offered, it must be confessed that the method of interference adopted by Mora was of a very mild type, for he merely requires the inferior magistrate, Soto, to notify the company through his court "*to at least comply with the last contract; that is, to pay them one-third in money.*" * * * Failing to do this, the company is notified "*to vacate the mines and allow the operatives to work them as they can.*" A great handle is sought to be made of this part of the order, counsel having gone so far as to term it an act of *dispossession.* The truth is, however, that the translation of the order given in the record (p. 54) and relied on by appellant does not convey the true meaning of the Gefe, as is shown in the opinion of Commissioner

Zamacona. The mistranslation is thus pointed out by him:

> This document is incorrectly translated, because the phrase "de lo contrario dejen las minas que las trabajen los operarios á la manera que puedan," the exact version of which is, "*otherwise, let the operatives work the mines as they can*," was interpreted as an order of ejectment by writing it, "*that the company were to vacate the mines and to allow the operatives to work them as they can.*"
>
> The Spanish verb "dejar," which is equivalent to the English verb "to let," when used in connection with another active verb, as "dejar caer," "dejar trabajen," or "dejar que trabajen," does not signify to remove from, to dislodge, &c., nor involve any of the ideas conveyed by the English word "vacate."
>
> The violence done to the meaning of the sentence in question above, by the translation, is shown by the fact that in the Spanish text there is but one sentence of what is called in grammar the infinitive mode—"dejar las minas que las trabajen"—the determining verb of which is "dejar" and the thing determined "que las trabajen." In English there are two different expressions, one "to vacate the mine," and the other "to allow the operatives to work them as they can." By this discrepancy, *what was simply a well-intentioned notice or admonition by the local authorities assumed the aspect of an act of despotism or a threat against property.* The history of this matter fully shows how little truthfulness has been employed by the claimant on this point. (P. 399.)

This ought to be *conclusive*, for it can not be supposed that Señor Zamacona would have stooped to anything so derogatory as to attempt to gain an advantage for his Government by a deliberate attempt to pervert the sense of Mora's order. Indeed, Mora's subsequent order of July 10, 1867 (Exhibit X), lends no little support to the commissioner's view, whether it relates to the same affair as that of July 3, 1867, or not. In that order the Gefe, after rebuking Exall for not keeping his word, says: "Nevertheless, if you don't choose to continue your

work, *give the people permission to collect ores in the mines*, as I will not hold myself responsible for the consequences in a town where the people are without work."

Exall having still further *defied* the authorities by refusing to carry out the compromise that had been recently made with the operatives under official sanction, it would seem that if the gefe, Mora, had intended to dispossess the company it would have appeared in the order of July 10, but so far from there being any such purpose in the order, *it invokes the permission of the company* to the people "to collect ores in the mines," in obedience to a beautiful Mexican custom, which takes rank with customary law and springs from the idea that a mining concession is impressed with a public trust. Commissioner Zamacona describes it as follows in his opinion:

> To *pepena* [*pepenar metal en las minas*, is the language of the original]. the metal is something analogous to what the gleaners do who follow the mowers in the grain field. This precept, which the Bible inculcates as one not only of charity, but also of law, with regard to the crops, the Christian customs of Mexico have made extensive to mines, and the act is so frequently practiced that it has given rise to the making of a word expressly for the occasion: and precisely because *pepena* is a gratuity due to the charity of the possessor, it requires his consent. and this is what the gefe politico of San Dimas asked in behalf of the people to keep them from starvation, as they were without work.
>
> Consequently, "to *pepena* metals in the mines" is not precisely the same as "to collect ores in the mines," as is translated on page 53, or "that they may work the mines," as is still more incorrectly said on page 154 of the other translation.
>
> It is as unjust to bring a charge against Mexico because the gefe politico of San Dimas, under the circumstances, asked the

superintendent of the mines to grant the people permission to *pepena* metals, as it would be to say that Ruth was committing an unlawful act when she was discovered by Boaz. (P. 402.)

Recurring now to Exall's letter of July 11, in reply to the Gefe's of July 10, we find that he meets the Gefe's rebuke of not having kept his word by stating that the compromise referred to by the former was made while he, Exall, was in Mazatlan, to last until he should return, when he was to arrange matters himself with the Gefe. He then proceeds to state a new offer he had made the operatives:

> *I offered to the operatives all the mines, to be worked on shares by the carga, and some are already at work, and desiring that with this there may be the most friendly understanding about the affair.*

Here ended whatever trouble there was, and the following extract from Exall's letter to Garth, of July 13, 1867, reporting the matter, shows that what has been paraded as a terrible exhibition of tyranny was regarded by the superintendent at the mines as merely a trifling annoyance:

> When I received your letter by Sr. M. I was working the Abra, Cristo, Luz, and Arryan, a small force in each. Seeing the decided manner in which all further aid for the present was refused and the injunction to cut down all expenses, necessitated my stopping off the whole force from the mines. As I had only a short time previous reduced the cash payment from ⅛ to — (which occasioned a stop for 8 or 10 days, which I was glad of, as it was so much clear gain, *and a little spat with the officials, which was gotten through without much trouble*), I thought it best not to stop off immediately, but prepare the miners for the change. I let them work on one week longer, and during that week informed them of my intentions. *They said nothing offensive*, but of course were disappointed, *as it would be a bad*

time for them to be without work in the rainy season. Since stopping off we have been trying to make arrangements with the men to work by shares and by the carga. I have succeeded in getting four miners to work by the carga. They are working in the Arryan, and getting out some good metal. I hope to be able to keep them there; *by doing so it will secure the mine in every way.* Four miners is all I had there before. Mr. Cullins thinks that in a short time he will be able to get more men at work in the other mines. *We can do better with them when they are a little hungry.*

Working in this way is much better and attended with the least expense. They are provisioned for a week and charged with what they get. What metal they get out is assayed; if it assays an amount worth working (we pay them in goods *a little money now and then*), about one-half its assay value. They, of course, will get out nothing but good metal, if it can be found. You see, in this way we get the metal out free of cost, *buy it at one-half its value, pay in goods, and make a handsome profit on them.* As long as the men will work in this way (which they will not do unless they get good metal) it will be our best way of working the mines. We must not expect them to get out any amount, but what is gotten out in this way will pay for packing down from the mountains. If I am not able to get men in the other mines I am privileged by the mining laws of the country to stop working in mines four months in the twelve. As these mines have been steadily worked over a year, I can safely take advantage of the privilege. (P. 271.)

Here we find the superintendent of this *persecuted* (?) company characterizing his late experience with Mora and Soto as "*a little spat with the officials, which was gotten through without much trouble.*" Here we read the account of his plan of forcing the operatives into terms by stopping work just as the dreaded rainy season was approaching, which is a fitting introduction to the cruel remark that follows: "*We can do better with them when they are a little hungry.*" We see, furthermore, that, notwithstanding Mora, in his first communication, had notified Exall, through Soto, that "*neither the mining*

ordinances permit them [the Americans] to pay in goods only, nor will Government consent to such abuses," Exall was *defying* the local authorities by *paying in goods.* Here are his words: "You see, in this way we get the metal out *free of cost, buy it at one-half its value, pay in goods, and make a handsome profit on them.*"

Is this the language of the head manager of a corporation that was being hunted and persecuted by Mexican officials and Mexican mobs?

But it is said that Exall takes a more serious view of the situation in the following passage from the same letter:

> The officials are getting daily more troublesome; their demands are all *foolish* and very unjust; but we have to do the best we can with them *and take things as quietly as possible.*

If the situation of the company at Tayoltita was as contended by appellant's counsel, Exall's language in this sentence is one of the remarkable features of the case. It is the language "of the wrathful dove or most magnanimous mouse." Its inadequacy to convey the meaning attributed to it is such as to make it hard to preserve one's gravity when counsel refers to it in support of his theory of persecution and violence.

We think that Sundell expresses the very idea that was intended to be conveyed by those words when he said, in answer to a question put by appellant's counsel:

> I heard of the so-called "rising of the people" and the "orders from the political chief, Marcos Mora," *but I did not consider*

the same as serious trouble, but only as petty incidents, annoying for the moment and devoid of results. (P. 544.)

This is confirmed by Francisco Torres, who was born at San Dimas and lived there all his life, and who says: "*I never heard that any difficulties arose between the company and the civil authorities at that place* [Tayoltita]." (P. 551.)

As for Soto's orders, they resulted in nothing, and were evidently treated by the company with the contempt they deserved, as going beyond what Mora's order had directed.

A great deal has always been made by opposite counsel of these orders, ignoring the fact that Mora's order to Soto of June [July?] 3, Exhibit Y, contains this direction: "YOU WILL SHOW THIS COMMUNICATION TO THE AMERICAN IN CHARGE OF THAT MINERAL;" and Granger tells us that the original order was exhibited to him and Exall by "Judge" Guadalupe Soto. (P. 49.) Manifestly, Soto's orders, *whatever their language*, were to be read in subordination to the one they purported to carry out. Indeed, the direction in the latter to Soto *to show it* "to the American in charge of that mineral" would seem to *supersede the necessity for any order at all from Soto.*

Of Soto it may be truly said that he was a low character, who did no credit to the judicial or the tailor's bench. He carried on a wine shop and gambling table opposite the company's supply store, and there

the operatives squandered what money the company was pleased to pay them. It irritated Soto and hurt his business to have them paid in goods, but this *persecuted, downtrodden* company went right over its oppressor and had its way in the matter to the end of its career at Tayoltita.

Furthermore, our theory of the Mora-Soto episode is supported by the omission to make it a distinct ground of complaint in the memorial filed before the commission. That it was not so used is strong to show that the argument based on it in the court below was an afterthought.

And here we would call the court's attention to the fact that the first of the series of the Mora-Soto documents, namely, Soto's letter to Mora, calling his attention to the abuses committed by the company, is missing, without any explanation whatever, and without an effort to supply its place with secondary evidence. May we not fairly presume that this document was suppressed for some reason by the unprincipled Granger, from whose custody the others came?

When Soto denounced Abra's hacienda, Guadalupe, on the ground of abandonment, and Exall filed an opposition before Soto's son-in-law, the *dreaded* Olvera, prefect of the district, did he cringe before him; did he use the language of "low-browed baseness?" On the contrary, he concluded

his opposition with such a demand for redress as might have been expected from a citizen of this country:

> Although I have no personal interest in this matter—being placed here by the company in charge of the mines, haciendas—*I can not allow any of them to be taken without using every lawful means in my power to retain possession of them.* And in this business *I demand equal and exact justice, without fear or favor, and leave the matter in your hands, with the request that you will protect me in all my legal rights and privileges.*
>
> Trusting that you will take proper and speedy steps to arrest this matter, I remain your obedient servant. (P. 278.)

What is more, the opposition was successful (p. 50), although Exall seems to admit, in his letter of December 5, 1867, to Del Valle, that Soto's denouncement was not without probable cause. (P. 279.)

These proceedings were in December, 1867, not long before the so-called expulsion, and *after* the Mora-Soto incident, and just one month previous to the Perez "affair," and at a time when, we are told by the veracious Exall, the condition was rapidly becoming unbearable.

Bartholow was equally bold and energetic in defense of the company's rights.

When the collector of taxes at San Ignacio demanded a tariff tax of 65 per cent. on certain supplies Bartholow had purchased for the mines, he, in a letter dated March 17, 1866, firmly replied as follows:

> If such a tax as this is imposed upon me I desire General Coronna to send here an officer empowered with written authority to take of my effects sufficient to pay it, for I shall, if anything like this sum is demanded of me, *put my goods and property under the protection of the flag of the United States, and*

from under it I intend they shall be taken. **At the same time I shall offer no other resistance to any legal officer of the Mexican Republic than to enter my** *solemn protest against it and appeal to my Government at Washington.* **(P. 215.)**

In a letter to the company dated April 10, 1866, Bartholow says, referring to the above demand, "I inclose you a letter that I wrote to the collector of taxes at San Ignacio, which explains itself. The result was, instead of paying taxes to amount of $3,000 or $4,000, as was demanded, *we only paid about $30*, and there was no necessity of troubling General Coronna with the matter." (P. 219.) Was it this kind of oppression that drove La Abra from Mexico?

There is great significance in what De Lagñel says about Exall's *dreaded* Soto. Although he was a justice of the peace at Tayoltita, De Lagñel says, "I did not know the man except to pass him and bow to him." (P. 500.) His interferences with the business of the company must have been peculiar! Indeed, the witness says he "*saw no exhibition of authority from one year's end to the other*" and had little if any occasion to see the civil authorities. (P. 511.)

When Soto bowed to witness it was with "a countenance that indicated no love," but he "*never harmed*" witness "*in any way.*" (P. 512.) There is a world of significance in the witness's surmise that the cause of this apparent dislike was that paying the miners in *goods* instead of *ready cash* cut into the

profits of the tippling shop and the gambling table. (P. 512.)

These little straws show the direction of the wind!

So far from De Lagñel being hunted and persecuted, he tells us that he relied on himself for protection (p. 512), and made his journeys alone from the mines to Mazatlan and back again over a wild, mountainous country. When asked how the Liberal officers treated him and the company, he replied, "*Always well.*" (P. 488.) He says, furthermore, that the only instance of military interference with the company was the Valdespino incident, and that then the military did not come nearer to the mines than San Dimas. Nor was there any interference by the civil authorities save by a detention of the company's hired pack trains, because of witness's failure, through ignorance, to pay certain interstate duties. (P. 490.)

There is nothing in the depositions of De Lagñel, Sundell, and Torres, who were intelligent, without bias, and living on the spot, to show that the disorders that occasionally occurred among the miners at Tayoltita, as they will occur in every mining region, had their origin in hatred of Americans in general or La Abra in particular. They took their beginning in Soto's tippling shop, or in the stoppage of pay and the consequent stoppage of the diversion of Soto's gambling table, as occurred once when the occupation of Mazatlan by the Imperialists and

French prevented the company from obtaining money from its bankers there. Once also there was some muttering, not traceable to the causes mentioned, as if the beginning of a mutinous demonstration, but it came to nothing. (P. 515.)

De Lagñel nowhere intimates that the company was in danger from the hostility of the authorities or the people.

Sundell, who was on familiar terms with Exall, completely explodes his story of the hostility and persecution of Mora, Olvera, and Soto. The witness was interrogated and answered as follows:

147. Question. Were you acquainted with the gefes politico, Marcus Mora, Macario Olvera——

Answer. I knew them all.

148. Question. What were their relations, so far as you know, with Mr. Exall, the superintendent of La Abra Mining Company?

Answer. So far as I knew they were of a friendly nature.

149. Question. Did you ever hear of any trouble between them and Mr. Exall?

Answer. Never.

150. Question. Could there have been any serious trouble between them without your hearing of it?

Answer. Impossible.

151. Question. Did your company ever have any trouble with those officials?

Answer. No, sir; never.

152. Question. Did you know Guadalupe Soto?

Answer. Yes, sir; I knew him.

153. Question. What was his position?

Answer. Occupation, do you mean?

154. Question. Yes; his occupation.

Answer. Storekeeper.

155. Question. Did he hold any official position?

Answer. In Tayoltita?

156. Question. At Tayoltita.

Answer. I don't remember; he might have been justice of the peace.

157. Question. What were the relations between him and Exall?

Answer. I never heard anything particular except good relations.

158. Question. Could there have been any serious trouble between them without your hearing of it?

Answer. No, sir. (P. 525.)

It stands to reason that if these officials, with two of whom, Mora and Olvera, he talked frequently (pp. 528, 529), had been breathing threatenings and slaughter against La Abra, Sundell, in his frequent intercourse with Exall and in his visits to the haciendi of the claimant, would have heard something of it. This witness furthermore says that no armed attack could have been made on the company's hacienda without his hearing of it. (P. 526.)

But the constant indulgences granted to La Abra by the Mexican authorities to prevent lapses of the company's rights under the mining laws afford convincing proof that what Exall and other witnesses say about the hostility of those authorities is entirely false.

The tell-tale letter-press copy book shows how frequently the company was a suppliant for the indulgence called a *proroga* or *amparo*, and how readily it was granted.

In his letter to De Lagñel, just before leaving the mines, dated May 5, 1866, Bartholow says:

> I also inclose a memorandum of the mines, their names, location, claimed by the company. All that we are not now working are under "*prorogue*" *until July, when you should make application through Don Angel Castillo de Valle, Durango, for an extension of the prorogue.* (P. 224.)

Accordingly, on June 9, 1866, we find the following letter from De Lagñel:

[Translation.]

HACIENDA OF LA ABRA SILVER MINING COMPANY.

June 9, 1866.

Mr. JESUS M. GURROLA, *Gavilanes:*

SIR: As the term granted to the company I represent for the protection of the unworked mines of their property is to expire in a few days, on account of notorious and well-known circumstances, and as I do not see any hope yet of perfecting things, I have thought necessary to ask for an extension of six months, for which I herewith inclose the necessary petition, and request you to take the trouble to attend to it in due form and to return it to me as soon as it is convenient, sending me at the same time an account of the expenses which may occur, so as to pay them at once.

Excuse the liberty I take in troubling so much an unknown person, but be sure of the friendship of your most affectionate and sincere servant.

J. A. DE LAGÑEL.
Superintendent La Abra S. M. Co.

(P. 228.)

On July 13, 1866, De Lagñel wrote a letter of like import to the same person, with a view to an "extension of the time for w orking the mine Promontory." (P. 234.)

In his letter to the company dated August 16, 1866, De Lagñel says: "Up to August I had been working La Luz and El Cristo mines, *the others being under porogue until January next.*" (P. 239.)

On August 31, 1866, De Lagñel's clerk writes Señor Gurrola, acknowledging receipt of the prorogues previously asked for. (P. 242.)

In his letter to the company of September 7, 1866, De Lagñel remarks that the "Promontorio"

mine, "as all other mines we hold, *is secured by prorogues newly obtained.*" (P. 244.)

By a letter dated December 16, 1866, we find De Lagñel applying for new prorogues, and using this significant language: "Herewith I send new applications, *drawn in accordance with the prefect's instructions, and trust they will meet his approval.*" (P. 255.)

When asked if he ever had "any trouble in getting these extensions," De Lagñel replied: "*I don't remember any. I think they were granted without any trouble.*" (P. 511.)

On October 14, 1867, Exall wrote the president of the mining deputation of the district of Sandimas as follows:

[Translation.]

Mr. ANTONIO ARMIENTO:

SIR: *In compliance with your instructions*, I accompany you the petition for the "amparo" of the mines of Anayan, Sauz, and Talpa, all of which are included in the same dependencies, and I inclose you, at the same time, $6 for the expenses of the document, including the stamped paper, on which you will do me the favor to write the petition, as there is none here of that kind.

I hope that you will send me the document by the first opportunity, either to me at Tayoltita or to the care of Mr. D. I. G. Rice, at San Dimas.

I am your affectionate and sincere servant,

CHARLES H. EXALL,
Acting Supt. La Abra S. M. Co.

TAYOLTITA, *October 14, 1867.*

(P. 276.)

How absurd the pretension, we repeat, that the Mexican authorities were constantly on the alert for an opportunity to drive La Abra from the country,

when they were *all the while granting indulgences to prevent forfeitures of its mining rights!*

A TRANSFORMATION.

Exall, like other mendacious witnesses, is betrayed by a defective memory.

Guadalupe Soto is constantly referred to by Exall as one of his *bitterest foes*, and as one of the chief architects of the company's ruin. In his rebutting testimony he says:

> Said Judge Guadalupe Soto, and the prefect, Marcus Mora, encouraged this spirit among the men, and *incited them to riot* by telling them, falsely, that the company came there to annex Durango and Sinaloa to the United States, and they ordered all the men whom I did employ to quit work, which nearly all of them did do frequently for weeks at a time, paralyzing the works, and the business of the company, so that I sometimes had but few men at work, and the men who did work had to so manage the same as to deceive the prefect, or keep the fact from his knowledge that they were still working for the company; and on one occasion, Aquilino Calderon attempted, notwithstanding this order, to work at the mine "El Cristo," but thereupon he was by force of arms compelled, by said judge and prefect, to quit the company's service, and they, the said Prefect Mora and *Judge Soto infused the same hostile feeling into the whole mass of workmen*, and said Mora and Soto issued the written communications or orders to me, which are referred to in said defensive testimony, requiring me to employ all the men, and work the mines as Soto and Mora directed, or to abandon them to the people to be worked by themselves as they pleased; but those written orders *were mild compared with verbal orders given me by said officials, from time to time*, and finally the last order or warning by the Prefect Olvera, notifying me to abandon the works and leave the country, which forced the abandonment of the company's works and mines. It was but a foregone conclusion with said authorities, as from their words and actions I felt, weeks before that time, that the abandonment was inevitable. The local authorities and other politicians urged the workmen to hostile demonstrations, and at one time they charged upon the hacienda and broke in the doors. This state of hostile feeling continued, and said turbulent characters con-

tinued to harass the company in its operations, and when, soon afterwards, Macario Olvera, Soto's son-in-law, became prefect, matters grew rapidly worse, so much so, that only a few nights before I escaped, an attack was made upon the hacienda of the company by some men headed by said Prefect Olvera himself, as I was informed the next day by one of the friendly Mexican workmen, a muleteer. They were armed with pistols and machetes but as I had been previously warned of it by said friendly muleteer, I was in some measure prepared for the attack, and after they discovered my position and strength, they retired for that night. *Soto* and Olvera both told me that *unless I employed all the men who were out of work in that district, which they knew was utterly impossible, that they would let the working people drive the company out of that district and give them the mines to work as they pleased.* Their *verbal* orders to me were *much more pointed, emphatic, and hostile,* than anything they wrote me. They were *working openly and covertly to get us out,* and to escape as much of the responsibility as possible for so doing. (Pp. 153, 154.)

Again he says (p. 156):

Said Rodriguez was a common laborer, and was discharged by me for dishonesty, and, of course, he became very hostile, and was one of those who made the night attack on the hacienda, with other armed men, and *amongst that number of violent characters,* I recognize the names of no less than four of these Mexican witnesses reported here by Cipriano Quiroz, viz: Bartolo Rodriguez, *Guadalupe Soto,* Cepomucino Manjarrez, and Victoriano Sandoval.

And, at 157, he uses the following language:

It was known publicly that Cipriano Quiroz, before whom this slander is said to have been stated, was one of the bitterest foes of all Americans in that district, and in connection with the Laveagas—Miguel and Arcadio, father and son—Marcos Mora, *Judge Guadalupe Soto,* Marcus Olvera, the prefect, and some federal officials at Durango, *was notoriously at the bottom of the conspiracy, and the expulsion of the company.*

The claimant's witness, Bissell, also deposes (p. 45), that "Guadalupe Soto was known as a bitter enemy to said company," referring to the Abra Company.

Now for a startling transformation! In about seven months after the cruel, terrifying treatment

which, it is claimed, is evidenced by Exhibits V, W, X, and Y, namely, on February 7, 1868, and a few days over a month before Exall's so-called expulsion from the mines on March 20, 1868, we find him and the savage Guadalupe Soto treating and transacting in the most fraternal way, as witness the following document:

> The American, Charles H. Exall, as the representative of the mining company of the Abra, and D. Guadalupe Soto, enter into the following agreement:
>
> Mr. Exall grants permission to said Soto, for the period of six months, counting from this date, to use the mining works (beneficio de metales) on the land formerly known as the Guadalupe estate of Tayoltita, in the mining district of Tayoltita, on the following conditions:
>
> 1stly. Mr. Soto pledges himself not to destroy nor injure the structures and implements which are at present to be found in said mining land, but, on the contrary, to take care of the same as best he may, in behalf of Mr. Exall.
>
> 2dly. At the end of the aforesaid six months, Mr. Soto will deliver said land to Mr. Exall, *or his successor*, with all the improvements and implements which said Soto may have introduced in it, always recognizing him as the proprietor of the company of the Abra, without charging him anything for the improvements and works which he may have introduced upon the land aforesaid during the period mentioned, as, in the like manner, Mr. Exall should not exact anything for rent.
>
> This agreement does not prevent the contracting parties from entering into a new agreement, extending the term or any other agreement satisfactory to both parties. San Dimas, February 7, 1868. (Signed) Guadalupe Soto, Charles H. Exall. (P. 132.)

And, what is more, this agreement was *extended* for a time not to exceed seven months, on August 7, 1868, by James Granger, who was left in charge of the mines by Exall when he *fled*, as witness the following:

> We, the undersigned, the parties to the foregoing contract, mutually agree by these presents, that said contract shall con-

tinue in all its force and effect, and upon the same terms and conditions, for another term, which shall not exceed seven months, as follows: Beginning on the 7th of August of the present year, and ending on the 7th of March, 1869.

To conclude this, we have signed this day, August 7, 1868, appending signature and seal. (Signed) Gaudalupe Soto, James Granger. (P. 132.)

Granger, identified with La Abra, and the intimate and trusted friend of Exall, remains behind in peaceful possession of the company's property, and the turbulent populace, that, as Exall tells us, thirsted for his blood and were eager to take possession of the mines, do not hurt a hair of Granger's head or interfere with his possession in any way! So entirely to the contrary was the situation that the cruel Gaudalupe Soto, the father-in-law, too, of the wretch Olvera, humbly solicited from Granger an extension of the license to occupy the company's hacienda previously granted by Exall! Soto was in possession; *why did he not just remain there?* for, according to Exall, there was no law to put him out. Besides, if there was a *complete abandonment of the property* by La Abra, of what avail could Granger's extension be? The thing is absurd on claimant's own theory.

It is true that Exall tries to prove (p. 152) in his rebutting testimony, which, by the way, he gave *after carefully reading all the depositions of the defense*, as he tells us (p. 150), that he executed this paper merely to "*conciliate*" Soto, and through him his son-in-law, Macario Olvera, *the terrible* (p. 152), but this thoroughly untruthful witness did not suspect

that he would be confronted in the case now pending with his letter of May 8, 1868, to Granger, which he concludes by sending his "*kind regards * * * to Guadalupe's family generally, Cecilia, and the Tayoltitians generally.*" (P. 288.)

In less than two months after his expulsion from the mines Exall is calling his persecutor, Soto, *familiarly Guadalupe* and sending "*kind regards*" to his family. This is the same Guadalupe Soto whom he speaks of in his second deposition (p. 156) as having been "among that number of *violent characters*" who made "*the night attack on the hacienda*," and also (p. 157) as one who "*was notoriously at the bottom of the conspiracy, and the expulsion of the company*," and who infused "a hostile feeling into the whole mass of workmen" (p. 154) and "*incited them to riot*" (p. 153).

And the Cecilia to whom he sends his "kind regards" in the letter above referred to, and who was the step-daughter of Judge Soto, is the same person whom he afterwards characterizes, in his second deposition, as "an abandoned woman of vicious and vulgar habits, and unworthy of belief under oath" (p. 159), she having, in the meanwhile, testified in behalf of Mexico.

What are we to think of a case whose chief corner stone was the testimony of such a witness as Exall? Steeped in perjury as he is, how can La Abra be innocent?

There is no room for doubt that La Abra's representatives in Mexico pursued an aggressive course of conduct, and presumed upon the respect and prestige incident to citizenship of the United States. Like Mrs. Bull, when visiting France, they looked down upon the Mexicans *as so many foreigners in their own country.* We have no doubt the witness Rodriguez spoke the truth when he said that the "Americans at the mines * * * *have always looked down in scorn upon the Mexicans employed under them, imposed tasks upon them not allowed by law,* and have refused to allow a Mexican miner the same pay for the same work as they did to American miners." (P. 114.)

Certainly it was very bold, not to say inimical, in the company to carry matters with so high a hand in a community where the authority of the law was much weakened by existing disturbed conditions. Certainly it was to be expected that unfriendliness, together with the usual harmless threats and maledictions to which it gives vent, would result from the company's arrogance and aggressiveness; but it provokes a smile when we are asked to believe the story of the company's forcible *expulsion* from its property and the headlong flight for life of Superintendent Exall and *his unnamed American friends*, leaving behind them the mines, piles of rich ores worth thousands and thousands of dol-

lars, and expensive machinery; in fact, leaving everything *open to anybody that chose to take possession;* for, it must not be forgotten, the contention is that Exall's abandonment was so complete and the outlook so desperate that he left no one behind, not even Granger, with authority to maintain the company's possession. We must, indeed, go to the pages of Munchausen to find a case parallel to this. And what remarkable *coincidences*, too, are these, that this so-called violent expulsion took place JUST AT THE TIME WHEN THE MINES HAD PROVED A DEAD FAILURE, as we shall show they did further on, and just at the time when law and order had commenced to be reestablished in Mexico, and just at the time the machinery, etc., of the company was completed and perfected and put in operation. (P. 156.) Poor Exall (*not to omit another striking coincidence*), when he reached Mazatlan in his so-styled flight, had to borrow $250 from his friend Mr. Peña to defray his expenses to New York, which, by the way, did not look much like he was in flight from a bonanza where, "early in 1868," and therefore shortly before his *flight*, he beneficiated some 20 tons of rich ore, *with a cash result of 17,000*, of which sum, however, strange to relate, *not enough remained in hand on March 20, 1868, to get him out of the country.*

PRESTAMOS OR FORCED LOANS.

While there is no distinct claim made in the memorial under this head, still much importance seems to be attached to it, as having, we presume, an aggravating inflammatory tendency. It is, however, remarkable that no such claim has been advanced; that is to say, *if we are to believe the claimant's testimony.* W. G. S. Clark, one of the principal witnesses, for instance, says:

> Deponent further says that the machinery shipped or forwarded to said company at Tayoltita, was a very large 10-stamp mill, and all the necessary machinery thereto belonging; that said company was frequently compelled to pay forced loans, or "prestamos," levied upon their said property, machinery, and supply trains, while the same were passing through from Mazatlan to their mines in Tayoltita, Durango, to the knowledge of deponent. But although deponent *was cognizant of many of said forced loans*, while he was so engaged in the work of forwarding said machinery and supplies, still he *can not recollect* the several sums so exacted and paid, nor the names of the officers of said army who made those exactions, with sufficient certainty to be able to testify on the subject of forced loans, satisfactorily to himself or to said company, *except in the cases already named.* (P. 63.)

To which might be added other testimony of like tenor, if important. (See Granger, p. 47.)

The only case of the levying of a forced loan which the witness identifies is the so-called exaction of $600 made by Colonel Guerra, who, it is said, detained a train, loaded with the company's property and under witness's charge, until the amount was paid by him.

The witness mentioned another occurrence as a case of *prestamo*, as follows:

> And deponent further says, that he knows of other abuses of said company by the military authorities aforesaid; that in the early part of 1866, an employee of said company, whose name, deponent believes, was George Scott, (called "Scottie"), who was on his way from Mazatlan to the works of the company in Durango, was met in the road by an armed party of the said military, between Mazatlan and deponent's residence in Camacho, and said armed party of troops, of the Republican army of Mexico, did, by force of arms, take from said Scott, or "Scottie," about twelve hundred out of three thousand dollars in gold coin, ($3,000), Mexican ounces, (187½ ounces), which money belonged to said "La Abra Silver Mining Company," and was being transported to said company by the said "Scottie," who appealed to deponent to visit, with him, the headquarters of the army in that district, and to ask General Guerra to return said money, or to receipt for it, in order that he might have *something* to return to said company; that deponent did so visit General Guerra's headquarters with the said "Scottie," but was informed by the commanding officer that he could not give up said money. After said "Scottie" had wasted two or three days to obtain some kind of acknowledgment of the taking of said money, he became disgusted, and returned to report the facts to his company at Tayoltita. Said General Guerra denied that he knew of the whereabouts of said "prestamo," or forced loan, and said general stated to deponent, in this conversation, that his army needed all the supplies that could be found anywhere, and, in substance, he said it did not matter in whose possession he should find supplies, or anything else actually needed by the army, that they must be taken, and that the same should be paid for at the close of the war then pending.
>
> Deponent charged his memory with the promises of remuneration for the so-called "prestamos," as deponent had suffered in that way, to a considerable extent, by the orders of the same authorities, and by other exactions from officers of the same army. (P. 63.)

This instance, however, was a simple case of highway robbery, and the witness's story of a prestamo is shown to be *utterly false* by the since-discovered official report of the occurrence made to the com-

pany by Bartholow, as superintendent, on April 10, 1866, from which we make the following extract:

> In consequence of the unsettled state of the country and the presence of bands of robbers on and near the roads leading from here to the port, I have had a great deal of trouble to get money from time to time transported to pay my hands and other expenses, and in consequence I was, of course, unwilling to risk any very large sum at one time: yet, when we were getting timber and doing other work which required a great many Mexican laborers, we frequently needed $1,000 per week, and of course all that the proceeds of the sales of goods did not supply, had to be brought from Mazatlan, but I so managed it that we never had more than from $1,500 to $2,000 at risk at one time, and all came through safe except in one case. This occurred some two weeks ago, when I sent Mr. Scott to San Ignacio to settle our taxes with the authorities. I gave him a check on Messrs. Echeguran, Quintana & Co., for $1,000 to bring up. Besides this he had some money outside of this sum which was left after paying the taxes in San Ignacio. He got the money as directed and started out of Mazatlan to overtake a train which was bringing up some supplies for us and Mr. Rice, and when about 20 miles out from the port, near the town of Comacho, *six or eight armed men sprang into the road and with their guns leveled upon him forced him to dismount, and robbed him of $1,178 in money*, his pantaloons, and boots (the latter, however, being No. 12, were too large for any of the villains, and were returned). He immediately informed the nearest commander of the Liberal forces of the fact, who sent for him for the purpose of identifying the robbers. He complied, but could not find them, for the reason that the officer could not find even half his men. I also at the same time opened a correspondence with General Corrona through the prefect, Col. Jesus Vega, at San Ignacio, *who, by the way, is, I think, one of the most perfect gentlemen I have met in the country*, and I am of the opinion that but for the turn in military affairs which occurred a few days since, we would in some way or other have been reimbursed for the loss, but now I have no hopes whatever, and we may as well charge up $1,178 to profit and loss (pp. 219, 220).

What Bartholow thus wrote he afterwards confirmed in his testimony. (P. 171.) So the company's important witness, William G. S. Clark, is again shown to be unworthy of belief. A boon to

truth was that tell-tale letter book! If the other witnesses for the claimant are as unreliable as this one, and we think they are shown to be so, *they have wisely sought safety from exposure in generalities.*

The next case of a so-called *prestamo* is thus referred to by Granger, who says:

> Said company was also forced to pay *prestamos.* A letter was received by Colonel de Lagñel, superintendent of said company, from Colonel Valdespino, of the Republican army of Mexico, dated July 27, 1866, and signed "Jesus Valdespino," which came into my possession as clerk of the company, and which letter has never, since its receipt, passed out of my possession; and I now present the same to the consul, marked "Exhibit Z." This letter demands $1,200 from said company for the support of his forces, under his command. (P. 47.)

In his third deposition Granger says "he does not know whether the company paid it (the *prestamo*) or not." (P. 112.)

Colonel Valdespino's letter, referred to by Granger as Exhibit Z, and being, with Exhibits V, W, X, and Y, *the only papers La Abra has preserved*, is as follows:

SAN DIMAS, *July 27, 1866.*

To Col. J. A. DE LAGÑEL.

DEAR SIR: Both Mr. Laeuz and the gefe of the partido, will inform you of the commission with which I am charged, by superior orders, and the powers vested in me to procure the necessary means for the maintenance of the forces under my command; but, informed as I fully am, of the injury which my continuance in the district would cause to its residents, and *particularly those having large business and property*, in the maintenance of my force, I have resolved to leave immediately, as I think that it will be for the interest of your business, and upon the sole condition that *the residents of the district furnish me with $1,200 for my departure.* I am confident that I take this step as the least burdensome, because, if I remain here, I must obtain means wherever they may be found, but as I have before stated, my purpose is to the individual guarantees which the laws accord to the people.

I hope that you will attentively weigh my reasons, and, convinced of their soundness, you will contribute your share toward completing the contribution levied by the gefetura of the partido, on your place.

I avail myself of the opportunity of offering myself as your friend and obedient servant.

(Pp. 54, 55.) JESUS VALDESPINO.

Exall also refers to this Valdespino business in his answer to question 16, in rebuttal, namely:

Question 16. With regard to the forced loan made by the company to Jesus Valdespino, for the support of his troops, state whether or not the whole or any of it was paid by you; if not, by whom was it paid, and when?

Answer. It is untrue that any part of it was paid by me, voluntarily or otherwise. I was not superintendent until September, 1866, and this loan was made in July, 1866, when Colonel de Lagñel was superintendent, as will be seen by the order addressed by said Valdespino to Colonel de Lagñel, and, *to the best of my recollection, the whole amount, $1,200, was required of and paid by said* De Lagñel. There was a small loan, or "prestamo," previously required by Valdespino, of, I think, $500, and that was paid by contribution, and with much trouble, the company paying the largest part of it, and I recollect that some show of trying to collect from Mexicans a part of said $1,200 loan was pretended to be made, and failed, and Valdespino then fell back upon the company, as being most able to pay, and completed the payment. The Mexican witnesses must refer to the small loan, if they contributed anything to Valdespino, which I never heard of before. Those laborers were too poor to contribute, and I don't believe the story. (P. 154.)

It will be observed that Valdespino requests $1,200 from "*the residents of the district*," and yet Granger speaks of it as a demand on the company, which, "*it is needless to say, was complied with.*" (P. 47.) It is true, he says in a subsequent deposition that he does not know whether the company paid it or not. (P. 112.)

But Exall swears that, "to the best of my recollection, *the whole amount, $1,200, was required of and*

paid by said De Lagñel" (p. 460), *which he knew to be false*, for De Lagñel satisfied Colonel Valdespino's request by sending him *two pieces of mohair and two pieces of bleached cotton*, and declined to send money, because he had not enough to meet his "many and constant expenses." It may be asked, if this was not exceedingly cavalier treatment, if there prevailed the reign of terror described by Bartholow, Exall, and others?

The following letters from De Lagñel, which are another contribution to truth from the letter book, and which he identifies in his testimony and declares to contain the truth (De Lagñel pp. 479, 480, and pp. 236, 237), show, beyond a doubt, that Exall swore falsely when he said that "*to the best of my* [his] *recollection, the whole amount, $1,200, was required of and paid by said De Lagñel.*"

HACIENDA OF LA ABRA, *July 28, 1866.*

To the Gefe Politico of the San Dimas Mines:

In due time reached me your communication of yesterday in regard to a loan or tax which you exact from the residents of the district for the support of the forces of Colonel Valdespino, and having noticed the contents thereof I answer it forthwith.

I send you part of the articles I have and which you asked me for, hoping that they be useful and acceptable to you.

As regards the cash I am sorry to inform you that it is impossible for me to send you even a little, because I have not here the necessary amount to defray my many and constant expenses.

I request you to consider that this hacienda has brought the country thousands and thousands of dollars, most of which have been spent among the needy people of this district, and a considerable part in duties paid into the treasury of the district, under whose flag Colonel Valdespino is serving. As it is public and well known, not a single dollar have we received of this sum up to date. I send you two pieces of blue mahom [mohair]

and two pieces of bleached cotton, valued at sixty-five dollars and seventy-five cents, of which amount be pleased to send me the corresponding receipt, *in order that it may serve me as a voucher to the company I have the honor to represent.*

In conclusion, permit me to add that it is very strange to me that the total amount of the tax being $1,200 the share allotted to the two American companies should amount to half that sum, when there are in the district several residents who have considerable property.

I am, sir, your sincere servant,

J. A. DE LAGÑEL.

HACIENDA OF LA ABRA, *July 28th, 1866.*

Col. D. J. VALDESPINO, *San Dimas:*

SIR: Your favor of yesterday informs me of the sad situation in which you find yourself for the lack of resources and of your intention to procure them preparatory to leaving the district.

Understanding the great need that you are in and considering, as you yourself state, the many evils that we would suffer if you should bring your forces here, I do all I can to overcome the difficulties, and I have sent to the political chief of the district two pieces of mohair and two of bleached cotton, those being the only things among the necessary things mentioned which I have.

It is impossible for me to contribute with money in order to provide you with what you need to-day.

Be pleased to consider that our reducing works are not complete, and therefore unproductive, without reckoning the many expenses that we yet have to make, the proximity of the rainy season, the scarcity of money, and the abnormal political situation, which can not but cause us serious damages.

I am not, therefore, in a condition to accede, as you desire, to the wishes of the political chief, but have sent him what I have, hoping that they be accepted as a token of my good will.

I suppose that having contributed with what I can I may, as a matter of course, resume my work without fearing the interruption that would be caused by the arrival of armed forces.

I am, sir, your attentive and sincere serv't,

J. A. DE LAGÑEL.

And to show how entirely unlike the "forced loans" mentioned in claimant's evidence this Valdespino occurrence is, we give in full Valdespino's letter to the political chief of the district of San

Dimas, produced by Mexico, asking him to make an assessment or requisition on the people of the district for the relief of his suffering command, together with an official certificate accompanying the same, and confirming the statements contained in the above-quoted letters of De Lagñel as to the character of the settlement with Valdespino:

REPUBLIC OF MEXICO.

Political Bureau of the District of San Dimas:

This bureau having been made acquainted with the contents of your note of the 18th of last month, I have to say to you that, having *searched the archives of* THIS bureau, under my charge, for some data relative to the loan of $1,200, which the owners of the "Abra" assert to have been imposed upon them in the year 1866, by the officer in command, Jesus Valdespino, by agreement with the political authority of this district in said year, I have found a document which reads verbally as follows:

E. B. United Brigades—Brigade of Durango—2d Section—Teniente colonel in chief.

The extreme want which the force under my command is suffering, with which I have received superior orders to come into this district, to which purpose, and in order to sustain said force, I have had conferred upon me sufficient powers to procure means for the maintenance of the same, and of the other forces which I am to organize; but in view of existing circumstances, and being also satisfied that the district can not, without much inconvenience, afford the means which I find it indispensable to procure, at all hazards, in fulfillment of the duties I have to discharge, with this object in view, therefore, and in order that the people hereabouts may not suffer greater burdens than would be occasioned by my remaining over night, I have determined to take up my march as soon as possible; and in order to accomplish this, I want means, and I confine myself to what is absolutely necessary; thus then acting in conformity with the powers conferred upon me, and in consideration of what has been stated above, you will levy upon those persons in best circumstances, of this district, and of the villages and estates appertaining to the same, the sum of ($1,200) *one thousand and two hundred dollars*, which they will pay within the space of four days, counting from to-day. I should desire the political authority not to levy any contribution or loan, and it is painful to me to proceed

in this manner, although compelled by the stringent character of my duty. Although determined to withdraw, I wish every good to these people. I strongly urge upon you that the collection of this sum shall be made with the greatest possible care and equality, and of accord with a commission which you will name from among those that are best informed, which commission shall be presided over by the head of that bureau. I avail myself of this opportunity to tender you the assurances of my consideration and distinguished regard.

Independence and liberty.

San Dimas, July 27, 1866.

(Signed) JESUS VALDESPINO.

To the political chief of this district, present.

And in view of the fact that this bureau is not in possession of more circumstantial dates upon the subject in question, it has been determined to forward these to D. Ygnacio Quiros, who, at that period, was political chief of this district, who, being present, and having read your communication, says that he does not remember well what the Americans of Tayolita gave on the occasion, when Valdespino was in this mining district, but that it could not have exceeded two hundred dollars at the utmost, and this was given in the shape of goods, for although this was in the nature of a loan, yet Valdespino, taking into consideration the then existing circumstances of this mineral district, he confined himself to request that they should contribute, voluntarily, whatever they pleased for the support of his force, which was done by making the shares as equal as possible in this mineral district, which was in conformity with the sum mentioned; that he does not remember the amount, because he made no note of the fact, and that it has therefore not been repaid, and that he does not know whether this Valdespino was authorized to raise loans. This he will say: That when Santiago Papasquiero came to this point, he was governor of the State, and D. Genaro Leyoa, as secretary, wrote to this district, approving of what had been done in behalf of Valdespino. This is all the information that this bureau, under my charge, can give you.

Independence and liberty.

San Dimas, July 19, 1872.

(Signature) ARCADIO LAVEAGA.

To the judge of the 1st Instance of the district of San Dimas, present.

(P. 127.)

Turning now from this contemporaneous documentary evidence, let us see how the Valdispeno

incident is treated by De Lagñel in his deposition, from which we make the following extract:

> Question. There is a letter in the press-copy book concerning what is called a prestamo or forced loan, levied in Tayoltita by Colonel Valdispeno during your superintendency. State the circumstances of that, as far as you know.
>
> Answer. I received from the civil officer in San Dimas, and also at the same time from Colonel Valdispeno, letters, both bearing on the same subject. He had come into the vicinity with a command of cavalry—Liberal cavalry—destitute. The mules were broken down by coming over the mountains. They wanted food and clothing and money, and they wrote to me, saying that they had apportioned it on the two mining companies, the one at San Dimas and the one with which I was connected, levying one-quarter upon us, and the other half was to be borne by the citizens. I was advised to comply. They wanted $300, if I recollect right, in money. I didn't have the money to give them, *and didn't intend to give it even if I had it.* I was advised to do so, or they would come there and rob the place, as it was said to be the habit.
>
> Question. By whom were you advised?
>
> Answer. I was advised by a man named Norton, who had married a Mexican wife.
>
> Question. The same man who was your clerk?
>
> Answer. Exactly. He had been in the Liberal service. He said to me, "It will be to your interest to do it; they will sack this place if you don't." I said, "I am not going to do it, for the good reason that I haven't got the money, in the first place, *and if I had I wouldn't do it.*"
>
> Question. What was the result?
>
> Answer. I sent them a few goods—some stuff they wanted—blankets and hats. I sent them some goods—cotton goods—and wrote a courteous note to each one of them, expressing regret that I could not comply with their wishes, and stating that we had no money, *because the mines had never turned out a dollar.* They wrote me an acknowledgment, and sent a receipt for the goods and *courteous acknowledgments. That was the end of it.* (P. 488.)

"*That was the end of it!*" How pregnant those words!

The face put upon this Valdespino matter by Granger and Exall in their depositions is thus

demonstrably false. It was not the mailed hand of military power, *but the hand of supplication*, that Valdespino stretched forth, beseeching assistance for his suffering soldiers. To give a different version of the transaction was criminal in Granger and Exall.

The remarks of Commissioner Zamacona on Valdespino's letter to De Lagñel are sufficiently instructive to have a place here. He says:

> The translation of this document, which is on page 53 of the printed book and was made by the claimant, is not sufficiently correct, and leads to the formation of an erroneous judgment. In addition to what has been already said as to the translator's having omitted to insert the words "private correspondence," which immediately changes its character from an official order to a friendly letter, a most important error was committed in the translation. The text of the last paragraph of the letter says:
>
> "Espero pues que Vd. pese con atencion mis razones y que convencido de ellas, hará cuanto esté de su parte, para dar el lleno al impuesto que la gefatura de este partido asigna á ese punto."
>
> This was translated:
>
> "I hope that you will attentively weigh my reasons, and, convinced of their soundness, you will contribute your share toward completing the contribution levied by the gefatura of the partido on your place."
>
> Valdespino did not ask his friend Lagual [Lagñel?] to complete anything, nor to complete the contribution imposed on the locality where he was. What he did was to state the situation, explain that by the sacrifice of twelve hundred dollars the people of the district might free themselves from the inconvenience of having a military force in their neighborhood, which necessarily had to live off of the country, and begging him, in view of all this, on his side, to do what was possible, in order that the place where he resided, or the mines (one only among the many which the district embraces, as the Spanish text says) should carry out the idea or plan which was recommended.
>
> But laying aside this circumstance, the character of Valdespino's communication will be still better understood if the other one which he addressed to the gefe politico of the place,

on the 27th of July, 1866, be examined. This is official in its character, is stamped, sealed, and countersigned, and translated into English on pages 158 and 159 of the English book.

In this communication Valdespino, after explaining that he is compelled to support and feed his troops, adds that the political authority has no wish to levy and [any?] tax or exact any loan. For this reason he had determined to leave the place, and in order to do so he desired to obtain from the people of the district and the towns adjoining, who were in better circumstances, the sum of twelve hundred dollars. This letter is written in the same spirit of moderation as the other letter, and its text, without forcing, shows two things:

First. That in the measure projected by Valdespino there was no intention of violence, or any indications whatever of hostility against the inhabitants of San Dimas; but, on the contrary, it manifested strong evidences of the consideration which officers in the field do not always practice.

Second. That the twelve hundred dollars which was to be collected was not demanded (that is, if it was paid by them) exclusively from the Abra Company, but that it was distributed on all people of means in the district, and on those of the towns and farms embraced in it. But a portion of this assessment could have fallen on the company, and it is not comprehensible why they should have demanded the whole twelve hundred dollars. (Pp. 393–395.)

Again, the witness, Clark, having also given a false account of the Scott or "Scottie" robbery, may we not safely conclude that his labored effort to make a case of *prestamo* of the $600 alleged to have been exacted by Colonel Guerra is unworthy of belief, the falsehood in the Scottie matter being of itself, to say nothing of other matters, sufficient to blast the whole deposition.

That appellant has not produced from its files a single voucher to prove a forced loan is a strong circumstance to show that it did not suffer from exactions of that kind, and the danger of fabricating the necessary documentary evidence no doubt,

accounts for the failure to put in a claim on that head. It can not be presumed for a moment that money or property was taken by the Mexican authorities for public purposes without giving the owner a receipt or voucher of some kind. It will be remembered that De Lagñel, in his letter of July 28, 1866, to the Gefe Politico, asks him to furnish a receipt for the value of the merchandise sent to Valdespino, "*in order that it may serve me as a voucher to the company I have the honor to represent*," and so it must have been in every such case, unless we are to assume arbitrarily that these public authorities acted like bandits in making requisitions upon the people to meet unforeseen emergencies.

The absence of vouchers or receipts to show the exaction of money or property by the Mexican authorities reminds us that whenever a document is deemed necessary to support the claimant's case it is produced. Granger, it will be remembered, apologizes for his inability to state the exact amount of money paid out by the company for improvements by saying that "the hacienda has long since been sacked of books, receipts, invoices, and other papers furnishing the necessary data upon which to make anything like an exact statement on the subject" (p. 50), yet when it was deemed advisable to prove the facts stated in Exhibits V, W, X, Y, and Z this witness had no difficulty in producing those documents. Of Exhibit X he says: "I have

filed it away with some other papers of the kind, and subsequently turned it over, *together with two or three others from Judge Guadalope Soto*, to the attorney of said La Abra Company" (p. 49). Of Exhibit Z the witness said that it came into his possession as clerk of the company and "*has never since its receipt passed out of my* [*his*] *possession.*" But to this day, we repeat, we have no explanation of the failure to produce the first of the Mora-Soto series, being Soto's letter of complaint to Mora. *Can we doubt that it was suppressed?*

La Abra had cast Granger off; at least such is the claim. What, then, was La Abra to him, that he should have taken so particular care of papers that could not have had value in his eyes until after that great purveyor of evidence, Alonzo W. Adams, got hold of them? This is, indeed, so remarkable that, taken in connection with Granger's entire want of credit as a witness, we are warranted in concluding that his possession of the books, papers, etc., in the office at the mines was not at all disturbed by the hand of violence and rapine without resorting to the after-discovered evidence to establish the proposition.

Bartholow testifies that "the amount of cash 'prestamos' so levied and enforced during my said superintendence *amounted to a little more than $3,000*" (p. 171), but will anyone say that a conclusion can be drawn from this and the other evi-

dence in the case that "prestamos" were even a factor in La Abra's so-called expulsion? The single circumstance that no claim for indemnity is made on that head is sufficient to show that the subject does not deserve the court's serious consideration.

The Valdespino affair, of which so much is made, is as far from supporting the theory for which it is used as the Perez affair, and assuming these instances to be the strongest the claimant can adduce, as we undoubtedly may, the case no longer presents a serious face, and the conclusion is forced on the mind that it is the result of fraud.

But supposing the books, papers, vouchers, etc., left in Granger's hands by Exall, when his so-called *flight* took place, were stolen or destroyed, is it possible that the company's office in New York did not contain all necessary information about prestamos? What became of the contents of that office neither the pious Collins nor anybody else can tell; at least such is the pretense, *and no one connected with the company has troubled himself to give a theory about the matter.* In this, as in so many other particulars, the claimant leaves the court to grope in the dark; and the only way in which the court can escape from the embarrassment of the situation is by concluding, from the absence of the usual documentary proof, that the evidence as to prestamos is not entitled to belief.

HOW CLAIMANT'S EVIDENCE WAS PREPARED.

The evidence laid before the commission by the claimant is entirely discredited by the conduct of those engaged in its preparation.

Alonzo W. Adams, who was employed to get it up, was sent by Bartholow from St. Louis to the company to be put on that work, *without any previous consultation with the officers of the company*, which Garth says he regarded as a strange proceeding, as it clearly was.

Here is Garth's account of the matter:

> Question. How did General Adams happen to be in your office that day when he met Green there?
>
> Answer. He came there with a letter from General Bartholow, of St. Louis. He came there with a letter of introduction from General Bartholow a short time before, in which he said he had employed General Adams to go out there and take the testimony, and General Adams produced the letter. *I had never seen or heard of the man before*, and we had to act in conjunction with the Western stockholders, who were more numerous than those from the East, and obtain their cooperation. It was supposed they would not be capable of raising sufficient funds to employ the lawyer or party, whoever went there, to take the testimony, and expenses of it.
>
> Question. Did Bartholow employ Adams to take testimony without any communication from you or the company in New York?
>
> Answer. He did, and to my surprise. I was very much surprised, because I had intended when I talked with them of sending another party.
>
> Question. Did the matter stand on Bartholow's appointment, or was there a contract between the company and Adams?
>
> Answer. There was a contract between the company and Adams, which *must be of record here, of course.*
>
> Question. Where was Bartholow at the time this thing took place?
>
> Answer. He was in St. Louis. He was in a bank out there. He had a banking establishment there. He was at the head of that banking establishment.

Question. Did he explain how he came to appoint Adams without consulting with the company?

Answer. He thought he was a good man and had agreed to employ him. (P. 718.)

So Adams was employed, and went to work, and his career in the case justifies the suspicion which his employment by the unscrupulous Bartholow was calculated to excite.

To form an estimate of the sort of character Adams was, we need not go beyond what he says in his own deposition about his failure to get Guadalupe Soto's testimony.

When Adams went down to Tayoltita in 1870 in quest of evidence, he says he found Soto still breathing threatenings and slaughter, so to speak, against Americans coming into Mexico to work mines, and took him and several others to San Dimas to give evidence for the commission before the local judge there. Owing, however, as Adams says, to the dissuasion of this judge, Soto declined to testify at San Dimas, but said he would do so at Mazatlan, and appointed a time to be there for the purpose. But he did not keep his appointment.

The account Adams gives of what Soto would have testified to is as follows:

He unreservedly and proudly avowed it as his present and past opinion that the mines of Mexico ought to and did belong only to Mexicans, and that all Americans ought to be driven out of the country; he admitted, when asked by me, that he, as local judge, had interfered with the company's working of their mines, and the conduct of their business, but claimed that he had rightfully done so by virtue of the orders of his superiors in authority; and he stated and admitted many other like facts

> which were very material to the company's case, and made me desirous that he give his deposition. He was bold, outspoken, and evidently proud of his hostility to Americans and his acts toward said company, and I asked him if he would go over to San Dimas, and state before Judge Milan what he had just said to me in relation thereto, and he replied that he would; and he then repeated that the mines of Mexico belonged only to Mexicans, and he declared, in a boastful manner, that he was willing to proclaim his principles and purposes, on that subject, before any court, or before the whole world. (P. 179.)

It is of course quite absurd to suppose that one in Soto's frame of mind toward La Abra, as pictured by Exall and others, would have played into its hands by tendering himself so readily as a witness to testify on the side of the company's claim against Mexico "before any court or before the whole world," but, waiving that, it is a source of much surprise that neither Granger nor Dana, who accompanied Adams in his expedition to San Dimas in search of evidence, makes reference in his deposition to these remarkable utterances of the judicial tailor, Soto. Adams, who was cunning enough to see the need of some explanation, attempts in a lame way to account for Dana's silence by saying that Dana supposed Soto himself would give a deposition, *which he, Dana, preferred.* Why he, Dana, had any preference in the matter is not intimated. No reason at all is given for Granger's silence. We may be sure, furthermore, that if Soto had made any such declarations, Adams, who lugged into the case everything he thought calculated to excite prejudice against Mexico, would have spared no pains to secure his

deposition before leaving Mazatlan, or, failing that, would have supplied the omissions of Granger and Dana by giving *his own deposition*, as part of claimant's evidence *in chief*, which he could have done at his convenience, anywhere.

The lame excuse for not putting the evidence in as part of the claimant's case in chief and for introducing it in rebuttal, when Mexico could not meet it with other testimony, *is more than suspicious.*

For our part, we believe that Soto told the truth when he said that Adams "did not wish him to testify," forseeing that his deposition would not be favorable. (P. 136.)

With this not very flattering introduction of Adams, we proceed now to show his manner of getting up the testimony which was laid before the Commission.

The witness Matias Avalos in his deposition for Mexico gives an account of the way in which his previous deposition for La Abra (p. 51) was prepared by the American "general," Adams. He says:

> At what point did you make the extra judicial depositions obtained from you by those of the Abra Company which Anastasio Milan, the magistrate of this district, had refused to take when requested to do so? He answered that at this point he made no deposition anywhere; *that he is certain of having made what he considered an extra judicial statement at the port of Mazatlan, in the National Hotel, in the presence of various persons*, among whom he remembers and knew an American called *General*, and one William N. Camacho, and they both questioned him about the arrest of the superintendent of Tayoltita, and he stated how it occurred. (P. 131.)

Again, he says:

From a memorandum he made of his deposition, at Mazatlan, he said that after writing the same down, *at the National Hotel*, the deponent, the General, and William, who lived, and lives at Camacho, *went to another house, where they began writing*, and, *from what he saw, correcting his deposition, and from there they took him to the house of the consul, simply asked him if he swore to the deposition he had made, and he answered, yes.* (P. 132.)

The witness Gutierrez says:

Being asked, Do you know if Judge Anastasio Milan refused to take any depositions at the request of the American, Adams? he replied that, at that time, this American requested Citizen Milan to go with him to Tayoltita, to enter into certain proceedings relative to his claim; and Mr. Milan having done so, he took deponent along with him, who being in Tayoltita, noticed that the aforesaid American, Adams, was taking depositions from some of the laborers, by himself, and without the intervention of the authority of Mr. Milan, taking down said declarations with pencil, on loose pieces of paper: that subsequently, in view of the fact that the authority of Mr. Milan had not been consulted in the least, the latter came to the conclusion that deponent and himself should come away from Tayoltita; that after the expiration of a few days, the aforesaid American returned to this mining district, and called at the house of deponent, requesting the latter to write down something for him, in order that Judge Milan might credit what he had written down in pencil, in Tayoltita; that Judge Milan, in view of these solicitations, summoned those deponents or individuals alluded to by Adams, and these being examined, the result was altogether different from what Adams had pretended, which caused so much annoyance to the latter that he left this mining district; that the above is the truth, and what he remembers at present, which he affirmed and ratified. (P. 136.)

The witness Maria Cecilia Jimenez says:

That what she knows is that an American, called General, and whose name is Alonzo W. Adams, who lately came in company with Mr. Dana, was the person who, solely of his own account, summoned some operatives who were living in Tayoltita, and who had been employed in his works, which operatives, having made their appearance, gave their testimony, the said general writing, and offered to pay them well for the loss of their time, whatever it might be. This was done without wit-

nesses being present, or authority of any kind; that deponent afterwards came to this mineral district, and, being in the hacienda of the Candalario Company, saw that the said general had quite an angry altercation with D. Santiago Granger, and an American named Rafael Martin, which arose on account that these gentlemen did not approve of the declarations that he had taken upon himself to receive on his own account, and besides, because, in their opinion, they were false, it being inferred that the said general wished to take advantage of the ignorance of the deponents, who could neither read nor write; that the result of this altercation was that D. Rafael Martin drove the said general out of his hacienda, saying to him that he did not wish to run the risk of any compromise to the company or to Mexico that would be likely to arise from his unjust pretentions in taking it upon himself to alone receive the declarations of the said operatives. (P. 113.)

It is said, as an aggravating circumstance, that the local judge at San Dimas ordered Adams and Dana and Granger out of the court room where the depositions were being taken, and we have little doubt that if he did he was provoked to it by improper interferences on their part. Nor was it so monstrous in the judge to say that they had no business there as "he could read the interrogations to the witnesses," for the old-established way of taking testimony in chancery, in England, was on interrogatories administered to the witnesses *out of the presence of the parties.*

Turning now to the deposition of Isaac Sisson, who was the United States consul at Mazatlan, before whom Adams carried a number of witnesses to give depositions for the commission, we find irregularities to have been practiced in taking these depositions that were *most discreditable* to both the consul

and Adams, and that lend confirmation to the testimony of the Mexican witnesses just quoted.

It is quite apparent that there was a thorough understanding between Sisson and Adams, and that the former, who seems to have had little or no sense of official propriety, was willing enough to wink at anything the latter might do, and it is no surprise that his Government cut short his career by calling for his resignation. (Pp. 698–699.)

The temper of Sisson toward Mexico appears in the affidavit he made to show the circumstances under which a certain Mexican is said to have snatched from his hands and torn up a deposition which the consul, with great impropriety, had opened and read aloud from in a public place. He concludes the affidavit as follows:

> As this malicious-looking Mexican had the appearance of a man of intelligence, it was evident to my mind that he, having attentively listened to the reading of the title-page of said deposition, in favor of "La Abra Silver Mining Company contra La Republica de Mexico," wickedly determined that there should be one deposition less to go forward against his country, and, by this unworthy act of snatching and tearing up this deposition, that he would contribute to the defeat of said claim. I can conceive of no other motive to induce said Mexican to commit such an outrage against an American claimant; and having acted as magistrate in taking said deposition, I feel it my duty, as representative of the United States Government, to give this certificate, which I do at the request of the attorney for claimant, *to show the desperate means resorted to to defeat the claims of American citizens.* (P. 106.)

Adams was fully alive to the gross irregularities and improprieties he and Sisson had committed, and tried to overwhelm the testimony of the Mexi-

can witnesses by vehemently protesting that everything was regularly done before Sisson. He speaks of the "high character" of Sisson and of "his prudent and precise manner of doing business" (p. 182). Again, he says, "Each and every deposition taken in Mexico on behalf of the Abra Company, claimant in this case, was taken honorably and lawfully, and *wholly by the consul or other magistrate certifying to the same*," *etc.* (p. 181).

It is sufficient to say of these protestations that Sisson's deposition, next to be noticed, and which may be relied on where it makes against him or La Abra, shows them to be *wholly and willfully false.* As a consequence of this, Adams's deposition falls to the ground *as an entirety*, in obedience to a well-known principle. The court will the more readily reject this witness after getting some further insight into his character. He came to Dahlgren's hacienda, near San Dimas, with a cavalcade of twenty or thirty persons. Dahlgren entertained him and his companions for some days, during which time he took testimony at the hacienda, and Dahlgren became so disgusted with him that he avoided his company as much as possible. During the visit, Dahlgren says he was under the influence of liquor whenever he saw him, and that "his conversation, nearly all the time he was talking, was a lewd conversation about women and his adventures with

women." (Sen. Rep. No. 2705, 50th Cong., 2 sess., Appendix, pp. 702, 703.)

Dahlgren gives the following scene between Adams and the witness, Granger, which took place at the hacienda, where, it will be noted, Adams was *a guest*, and the incident is not calculated to inspire confidence in Abra's testimony:

> Question. What we want to get at, Captain, is what Adams did, if anything, for the purpose of intimidating or in any way controlling Granger?
>
> Answer. When Mr. Granger asked to see the testimony, Adams read it.
>
> Question. What testimony?
>
> Answer. The testimony that Granger had given. And he said, "General Adams, I did not give that testimony." He jumped up and walked to him with his fist doubled up and put it under his nose and said, "You did give it; do you call me a liar?" and threatened to strike him. And I said, "Get out of here."
>
> Question. That was before you testified at Mazatlan?
>
> Answer. Yes; I had no interest in this thing at all.
>
> Question. I suppose that was the reason why, at Mazatlan, you were careful to have your testimony taken down precisely as you gave it?
>
> Answer. Yes, sir; I wanted to see it.
>
> By Mr. FOSTER:
>
> Question. This occurrence you have just related occurred at what place?
>
> Answer. At my hacienda at San Dimas, where he examined Granger.
>
> By Mr. LINES:
>
> Question. Was that the result of that trouble; that you told Adams to leave the hacienda?
>
> Answer. No, sir. He apologized for it, and I said if he would not repeat it he might stay at the hacienda. Otherwise he should go up to the town.
>
> Question. But as to Granger's testimony?
>
> Answer. I don't know. As I said, it was not a matter that concerned me, and had my own affairs to look after. (Sen. Rep. No. 2705, p. 674.)

Turning now to Sisson's deposition, we find that

Adams was allowed to get up the depositions for La Abra at the hotel at Mazatlan, as the witness Avalos says, or at the consulate, and that the consul gave no particular attention to them until fair copies had been made, when he read them to the witnesses. (P. 693.)

When Sisson was before the Senate Committee on Foreign Relations he testified as follows:

Question. Were you acquainted with Alonzo W. Adams in his lifetime?

Answer. Yes, sir; I saw him there.

Question. When did you first meet him?

Answer. I think it was in 1868.

Question. What was Adams doing at Mazatlan?

Answer. I won't be exactly sure whether that is the time or not, but I think it was. He came down there to get affidavits in regard to a claim.

Question. Do you know how the depositions that he obtained were taken? I mean where and in what manner?

Answer. *Well, he had an office or room at the hotel.*

Question. At Mazatlan?

Answer. At Mazatlan, *and the witnesses used to go down there and their affidavits were prepared there;* as a general thing in a rough form, as you may say; they would be got together; sometimes they were written out in full and other times they were not. They would be got together and written out in the consulate. Sometimes they would come up there.

Question. The witnesses?

Answer. The witnesses. Sometimes after they got up there, in reading over their affidavits and looking them over, they would find something that was misunderstood or something might be wrong about them and have to commence and go it all over again, like enough. (Sen. Rep. No. 2705, 50th Cong., 2d sess., Appendix, p. 790. See further extracts from this deposition, Appendix D.)

When examined in this case as to the attention he gave to the taking of Dahlgren's deposition, the following occurred:

Question. You took a part in it as consul, *particularly when it was copied and read?*

Answer. Yes, sir.

Question. *That is the time your attention was particularly interested?*

Answer. *I gave my full attention to it then.*

Question. *Before that the parties were together there getting up the deposition, getting it in shape and proper form?*

Answer. *Yes, sir.*

Question. *And talking among themselves?*

Answer. *Yes, sir; talking among themselves.* (P. 693.)

We might expect such a consul as that to say: "It was not my business to get up depositions, but it was my business to swear people to tell the truth *after they did get them up.*" (P. 697.)

When asked if it was not his duty to see that the witness giving his testimony did justice to Mexico, he replied: "No; it was my duty to see that the thing was done as correct as I could, I suppose; but I was not attorney on the part of Mexico." (P. 697.) According to his notion of official propriety, his business began "*after they got through and the deposition was ready.* Then it was my business to look over it, *but not to help them to fix it up.*" (P. 697.) Again, he says that Adams and Peña "*got together and made up*" Dahlgren's deposition, and when they "got it all right, to satisfy themselves, Mr. Peña copied it as it should be copied to make a decent, respectable deposition of it." (P. 697.)

Being asked if he paid much attention when all this was going on, he replied: "*Not a terrible sight; no.* All that I was watching for was when they got it through and got it all right, I would have it

signed and sealed and got rid of as soon as possible." (Pp. 697, 698.)

This is what Adams refers to when he speaks of Sisson's "*prudent and precise manner of doing business,*" and says the depositions were taken "*honorably and lawfully,*" and "*wholly by the consul or other magistrate certifying to the same,*" statements which he knew to be *absolutely false.*

Certainly the conduct of Adams and Sisson,[1] as above shown, lends strong support to the theory of fraud on which the bill rests, and we respectfully submit that the court must regard the depositions laid before the commission by La Abra with entire distrust. There being absolutely no check on Adams in those purely *ex parte* proceedings, he and his confederates, Sisson, Peña, and Danglada were, no doubt, guilty of other criminal acts.

After this evidence of the delinquency of Adams and Sisson, and of a conspiracy between the two, we are prepared to believe the charge of Capt. C. B. Dahlgren, that Adams had tampered with his deposition. It appears that Dahlgren, being called away from Mazatlan by urgent business, was compelled to leave his testimony in rough notes in Adams's hands, to be copied on a clean sheet over his signature, and the charge is that Adams fraudulently

[1] But it is necessary that the court should read the whole of this deposition in order to get an adequate idea of the reprehensible conduct of Sisson and Adams and the other parties concerned.

perverted the testimony. (Sen. Rep. No. 2705, 50th Cong., 2d sess., Appendix, p. 644.)

Dahlgren was examined at great length before the Senate Foreign Relations Committee. The following extract from his deposition sufficiently shows the criminal methods of Sisson and Adams on that occasion:

By the CHAIRMAN:

Question. About how many [referring to the witness's statement that his deposition "filled up a number of sheets"]?

Answer. Oh, quite a number; there may have been a dozen or two dozen sheets; a large number of sheets. He [Adams] said, "I have finished." I then said, "General Adams, allow me to read over those papers." He said, "They are your answers as written down by my secretary, and it is long; it is not necessary; *have you no confidence in me?*" I said, "I wish to see those papers, and unless I do they can not go out of this room; I must see them." He then handed me the sheets, and I read them over. I then said, "*General Adams, those are not the answers as I gave them to you, sir, and I will not allow that to pass for evidence.*" "Well," he said, "Scratch it out, or erase it, as you see fit." That was done, and then I said, "Now those answers are satisfactory to me and I will sign them," and I did sign them. He then said, "That is not fit to hand in as testimony, all scarred up in that manner." I said, "You had no business to write those answers in that way." And I said, "Well, I am on the way to San Dimas, and I haven't time to stay longer." I then called to Mr. Sisson, who was consul at Mazatlan, while I was United States consul at Durango——

By Mr. FOSTER:

Question. At that time?

Answer. At that time; yes, sir. I said to Sisson, "I will sign a blank sheet of paper and put it in your possession as consul, as between two consuls; you are to transcribe these notes and retain the original and hand that signature with the transcribed sheets ahead of it to General Adams as my testimony." Sisson said he would do it. I then jumped on my mule and road away, 170 miles back to San Dimas.

Question. During the time you were being questioned by General Adams and your answers were being taken down, was Mr. Sisson present, and did he hear the testimony?

Answer. If he did, he merely walked into the room and out

again; but he was not there to listen to it, either half of it, or a third of it, or a quarter of it, and probably paid very little attention to what went on.

Question. Then he did not pretend to conduct the examination?

Answer. No, sir.

Question. Or be present during it?

Answer. No, sir; he was not present, that is, to any appreciable extent; he merely came in a few times, took a book or paper, or attended to some other consular business, and went out; but he did not attend to that examination—did not give it any personal attention. (Sen. Rep. No. 2705, Appendix, pp. 647, 648.)

Dahlgren was then carried through a very particular examination, which enabled him to point to the instances in which Adams and Sisson had falsified his deposition. (See extract from Dahlgren's deposition, Appendix C.)

After such evidence as this and Sisson's, can we resist the belief that Adams also prepared the affidavits of John Cole, W. G. S. Clark, John P. Cryder, and others, which he went to Mexico to procure?

It is true that the unqualified denials of Sisson and his secretary and translator, Danglada, are relied on to overthrow Dahlgren's charge; but the testimony of the consul (pp. 691, 692) and the telegram of his secretary, read by consent "for what it may be worth" in connection with the allegations in the bill in regard to Dahlgren and his deposition filed before the commission (pp. 741, 742), are not entitled to have any such effect. Enough appears in Sisson's own deposition as to the manner of taking Dahlgren's to discredit him completely, and

we submit that his secretary, who participated in that reprehensible proceeding, is no more entitled to be believed than Sisson or Adams himself. It is, furthermore, to be regretted that the telegram to Danglada was leading. It should have been the simple inquiry: What were the circumstances connected with the signing of Dahlgren's deposition? He should not have been informed of what Sisson had said on that subject. That he was so informed is a good reason for suppressing his telegram in reply. It is, indeed, to be regretted that counsel for appellant has not seen fit to take Danglada's deposition in this suit.

It can not be readily accepted that a son of the late Admiral Dahlgren would have preferred the charge he did against Adams and supported it by his oath without being certain of his premises.

It is true that Dahlgren has not been examined in this particular suit. It was not necessary that he should have been, for the present suit is a part of the very inquiry that was before the Senate committee, where appellant was represented by able counsel, who cross-examined Dahlgren thoroughly. There is abundant authority to support this position (see a number of examples collected in vol. 1, Phillips on Ev., 5th Am. Ed., with Cowen & Hill's and Edwards's notes, p. 319, note 110). Depositions taken in a former suit which was dismissed by complainant, were held admissible in a second suit by

the same complainant against the same defendant (Hopkins *v.* Stump, 2 H. & J., 301, 303). So depositions used in a cause in the exchequer are admissible in a suit in chancery between the same parties and involving the same matter (Stephenson *v.* Biney, L. R., 2 Eq., 303). Besides, the Senate report is a public document to which this court is at liberty to refer at pleasure.

The objection to the admissibility of Dahlgren's deposition, on the ground that he was not examined in this very suit, does not seem, therefore, to rest on any substantial reason.

The perjury of Bartholow, his insistence that Adams should be appointed agent to take the testimony, the fact that Treasurer Garth received his first information of the existence of the Joint-Commission from Bartholow *by a letter which is, of course, lost* (p. 719), and that he, Bartholow, was the head of the Western stockholders who had control of the company, and, what is more, was a *heavy loser* by the adventure, all go to show that Bartholow was one of the fabricators of the claim, and that Adams was his chosen vessel and representative.

Garth tells us that "there was a contract between the company and Adams which must be of record here, of course" (p. 718), *but where that contract is nobody knows.* It, as many other important documents, has disappeared in some unexplained manner. Under it, Garth tells us, Adams was to have

a third of what the company got, "*employ all the attorneys*," and pay the expenses of the witnesses (p. 710 and S. Rep. No. 2705, p. 170). He seems to have been well provided for those purposes, for on July 1, 1880, the company assigned him an interest in the award to the amount of $145,757.23 (p. 628), and on February 1, 1884, the company assigned him another interest in the award to the amount of $30,000 (p. 626), and on March 24, 1882, the company stipulated that the sum due him was $99,731.46, payable without the usual conditions (pp. 630–632). And on May 6, 1880, Adams entered into an agreement with one Camp in the recital of which it appears that he, Adams, had an interest in the claim of John Cole *and others* against Mexico (p. 641). Cole we know to have testified for the claim of Abra before the commission, and we have reason to suppose that some of the "*others*" were witnesses in its support also.

Garth testifies that as soon as practicable steps were taken "*to raise voluntary contributions from the directors and stockholders to hire somebody to go out to Mexico to take testimony*" (p. 708).

But it was Sumner Stow Ely who prepared the way for the *ex parte* and corrupt testimony introduced before the joint commission in support of the claim. On November 30, 1869, Ely, in the firm name of Britton & Ely, wrote to Hon. Caleb Cush-

ing, agent of Mexico before the Joint-Commission, making the following remarkable inquiries:

> We are engaged in the preparation of the case for said company, and desire and are about to take testimony in New York and St. Louis and in several places in the States of Sinaloa and Durango, in Mexico.
>
> We do not see in the printed "rules of the American and Mexican joint commission" (of which we have a copy) any provision made for *notice to the opposite party of an intention to take testimony and to appear and cross-examine, etc.*, from which omission *we presume that the testimony is to be taken ex parte*, and we have accordingly taken the testimony of one witness, Charles H. Exall, in this city, who can be cross-examined at your pleasure. Nevertheless, to guard against a misconception of the rules on our part, we give you the above general notice of our intention to take testimony in support of the claim of said company; *and if you deem notices specific as to time, place, etc., necessary or desirable (and as to which we ask of you the favor to inform us) we will give them to you.* (Pp. 667, 668.)

This letter, Ely's own deposition shows, was written by him (p. 660).

Was the letter written in good faith or was it a mere *blind?* Why should Ely have desired to know from Mr. Cushing, officially, what he knew already, no doubt; namely, whether or no the usual requirements, mentioned in the letter, would be insisted on by him, Cushing? Could it be possible that counsel preparing an *honest* claim, approaching $4,000,000 in amount, would think of taking testimony in its support *without giving the other side specific notice as to time, place, and the names of witnesses*, and thus furnishing full opportunity to appear and cross-examine?

If the Joint-Commission had no rules as to such matters, was not that fact notice to the world that

they *invoked the rules universally observed?* Surely it could not have been argued that the commission was to proceed *without law* because its rules and the treaty were silent in that respect.

Nor did Ely reason in that way, else why did he not ask if the *oath* would be required? He knew that he could not safely go so far as to dispense with that fundamental requirement, at least. If now the oath was, in his opinion, necessary, by what process of reasoning did he reach the conclusion that the *supreme test of the value of evidence*, the cross-examination, could be safely dispensed with?

The truth is, that Ely supposed he could hold the oath in subjection to his will; but he knew that the cross-examination could not be so controlled.

Let us further examine this letter to Mr. Cushing. Its statement that "we have accordingly taken the testimony of one witness, Charles H. Exall, in this city, who can be cross-examined at your pleasure," is *a deliberate falsehood*, because the record shows (p. 34) that the deposition referred to was not taken until December 2, 1869, two days after the letter was written, and on the day Mr. Cushing's *unofficial* reply to it was dated. (P. 668.) The deposition, if written out, was not sworn to when the letter was written, for the reason, no doubt, that it might need some *doctoring*, in case the invitation to cross-examine Exall should be accepted.

Else why did not a copy of the deposition accompany the letter?

The letter, after stating that the writers "*are the attorneys and counsel*" of the company, and calling attention to the general character of the claim, then proceeds:

> We are engaged in the preparation of the case for said company, and desire and are about to take testimony in New York and St. Louis and in several places in the States of Sinaloa and Durango, in Mexico.

In his deposition given on September 24, 1874, Mr. Ely testified as follows:

> I am not the agent or attorney of any person interested in the claim of said company, which is being prosecuted in this cause; I am not the agent of said company; *I am its attorney at the city of New York, for its general business, as I have already stated, but it has special attorneys at Washington for the prosecution of said claim;* and I have no interest whatever, direct, contingent, or otherwise, in said claim. (P. 176.)

In April, 1895, in this city, Mr. Ely was examined in this suit. The court's attention is called to the following extract from this deposition:

> Question. But in preparing the case for the commission, was it not necessary for the officers of the company and the counsel of the company to inquire for and search for the books containing the transactions of the company prior to 1868?
>
> Answer. *That is a question that would have to be determined by the counsel here* [in Washington] *who controlled the matter. I had nothing to do with the matter.* The books, as I understand it, were in Mexico. (P. 659.)

The letter and the extracts from the depositions furnish conclusive evidence of *another* deliberate falsehood to be laid at Ely's door, but it is immaterial to inquire whether the falsehood is in the letter

or the depositions—in other words, whether Ely was counsel for the prosecution of the claim, as he states in the letter, or was not, as he deposed when it was to the interest of the company that he should so swear. And his attempt to explain away the inconsistency (p. 653) only serves to make his perjury more clear.

Again, it will be noted that Ely only produces Mr. Cushing's *unofficial reply* to his letter (p. 668), without attempting to account for the absence of the *official one.* Why was the latter suppressed? There was a motive for it, we may be sure.

It is noticeable that the agent for the United States, Hon. J. Hubley Ashton, was not applied to for the information sought from the agent of Mexico, nor is any explanation offered. As it was Mr. Ashton's duty to present the Abra claim to the commission and retain complete charge of it, we think it was due to that gentleman to consult him upon the points mentioned in the letter to Mr. Cushing, and the omission to do so is suspicious. Indeed, the appellant has introduced in evidence a circular of the Department of State, dated February 23, 1870 (pp. 742, 743), which expressly refers claimants, for information, to "J. Hubley Ashton, Esq., the agent and counsel of the United States." But Mr. Ely stood in need of no such prompting as that.

Taking all this in connection with the prevailing opinion "*that criminal prosecutions could not be main-*

tained for false swearing in cases before it" [the commission] (Mr. Romero to Secretary Bayard, S. Ex. Doc. No. 109, 50th Congress, 1st sess., p. 89), we see the strongest temptation to fraud and the subornation of false witnesses; and there can hardly be a doubt that the opportunity thus afforded was improved by Ely, Adams, Sisson, Collins, Exall, and Bartholow, and by others playing subordinate parts in this drama of fraud and falsehood. It is not too severe to say that these men deserved the brand of infamy which the common law puts upon persons convicted of offences affecting the administration of justice. (2 Russ. Cr. p. 973.)

THE UMPIRE'S AWARD NOT PRIMA FACIE EVIDENCE.

Without intending disrespect to Sir Edward Thornton, the umpire, it should be said, as due to this court and to the cause of justice, that the award in this case is not the product of a mind skilled in the art of weighing evidence—of a mind that, by training and experience, had come to know adequately that testimony proceeding from the mouths of seemingly fair and credible witnesses, but counter to the experience of mankind, is no more worthy of belief than that proceeding from obviously tainted sources; or, in other words, that testimony, to be credited, must be such as "*the common experience of mankind can approve as probable under the circumstances.*"

Not only so, the umpire betrays a want of competent knowledge of the evidence even when he says, in the beginning of the award, that there was "NOTHING RASH" in that headlong folly, that midsummer madness—La Abra's adventure in Mexico.

Equally unexpected is the statement there that the claimant went into Mexico relying upon the proclamations and invitations of President Juarez, *not one of which has ever been in evidence*,[1] when at that very time the Empire was established and supported by French bayonets and Maximilian was on his throne in the City of Mexico, and Benito Juarez, the President of the Republic, who, it is said, issued those proclamations, was a hunted fugitive and not much more than President in name.

To accept the impossibilities and improbabilities of the claimant's case involved belief, on the umpire's part, that through some miraculous interposition and for some inscrutable reason the established laws of human conduct were suspended as to the actors in this drama of fraud.

The umpire indulges in the following remarks

[1] The following occurs in the brief of Señor Avila in support of his motion for a rehearing before the umpire of the Abra case:

"Parties interested in this claim have said so much about proclamations inviting foreigners to immigrate to Mexico *that though they present none of those proclamations, and do not even cite their dates with any precision*, people have come to believe not only in their simple existence, but that the Government assumed to grant special protection and immunities *to all industry undertaken with foreign capital*." (Ex. Doc. No. 103, 48 Cong., 1st sess., pp. 84, 85.)

with regard to the claim for ores stolen and the evidence adduced in support thereof:

> The umpire is satisfied, from the respectable evidence produced, that a large quantity of valuable ore had been extracted from the mines and deposited at the company's mill, and that it was there when the superintendent was compelled, by the conduct of the local authorities, to abandon the mines and cease working them. But the umpire is of opinion that there is not sufficient proof, *nor indeed such proof as might have been produced, that the number of tons stated by the various witnesses were actually at the mill, or at the mines, at the time of the abandonment. In so well regulated a business as the umpire believes that it really was, he can not doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down, and that periodical reports would have been made to the company at New York. Neither books nor reports have been produced, nor has any reason been given for their nonproduction.* The idea formed, even by persons intelligent in the matter, of the quantity of a mass of ore *must necessarily be vague and uncertain, and that of its average value still more so.* Still, the umpire is strongly of opinion that the claimants are entitled to an award upon this portion of the claim. (P. 9.)

Yet, on this *suspicious and presumptively fraudulent* testimony, introduced without the slightest attempt on claimant's part to account for the absence of the higher evidence to which it points, the umpire made an award in favor of claimant for $100,000, in Mexican gold, to cover lost ores, with an annual interest of 6 per cent from March 20, 1869.

Quite as remarkable, if we may be permitted to advert to certain errors of law seemingly of a character to reflect still more on the judicial qualifications of the umpire, is the condemnation of Mexico to pay the company the equivalent of its capital stock, namely, $235,000, with interest, in the absence of evidence to show that Mexico had confis-

cated the mines, and in the face of the evidence that claimant *purposely abandoned its property rights in them.* Mob violence might have dislodged the company's possession, but could not destroy a title which the whole power of the Government of the United States might have been relied on to support.

Nor are we able to perceive on what ground interest was awarded on that sum, especially in the light of the umpire's own declaration that the precariousness of mining investments rendered it out of the question to award profits. Is not the interest thus adjudged only another name for profits, we would inquire?

In addition to the umpire's want of skill in weighing evidence,[1] it is apparent that the business in his hands as umpire and, presumably, as minister of a great power, near Washington, together with the necessity of completing his work within the time which was the limit of his powers, were conditions extremely unfavorable to a thorough examination of this voluminous and confused case.[2]

Under these circumstances, we respectfully submit that the award of the umpire is not even *prima facie* evidence in favor of the claimant, and should

[1] The Romans had a saying that it does not fall to the lot of everyone to visit Corinth, *Non cuivis homini contingit adire Corinthum* (Hor. Ep. 1, 17, 36), nor is it derogatory to any intellect to say that nature has denied it the judicial instinct.

[2] Sir Edward Thornton decided 460 cases, as umpire, and wrote over 400 opinions. (Ex. Doc. No. 103, H. R., 48 Cong., 1st sess., p 17.)

go for nothing in the determination of the question of fraud.

If, now, our reasoning be correct, the case of La Abra Company as presented to the Commission and then to the umpire was incredible because of gross improbability, not to say impossibility, and because the testimony on which the charges in the memorial are founded is more than suspicious on its face, thus justifying the conclusion that the claimant and its witnesses who attempted to blacken the escutcheon of Mexico were all members of a common conspiracy, all partners in a common crime.

THE SUPPRESSION OF DE LAGÑEL'S TESTIMONY.

It will be remembered that it was less than a year after De Lagñel resigned and left the service of the company at Tayoltita that Exall claims to have been driven from the mines. The company, therefore, had every reason to believe that De Lagñel could throw much light on the controversy between it and Mexico, and the failure to examine him is strong to show the claim to be a fabrication.

The fact is, that Bartholow, Collins, Adams, Ely, and the other members of the conspiracy were as afraid of that honest soldier as a struck fowl is of a gun. They knew that he could neither be browbeaten nor bribed, so they determined to suppress the information they had concerning his whereabouts.

Accordingly, we find the first depositions of Collins (p. 38) and Exall (p. 30) taken in New York under the eye of Sumner Stow Ely, entirely silent as to De Lagñel. This silence would not have been broken but for the unexpected references to De Lagñel by the two Mexican witnesses, Loaiza (p. 71) and Manjarrez (p. 145). It now became necessary to explain away the omission to put him on the stand, and Collins and Exall attempted to furnish the explanation in their depositions in *rebuttal*, supposing they were then safe from contradiction.

Collins said:

> The company has made *diligent inquiry* to find him [De Lagñel], for the purpose of obtaining his deposition as evidence in this cause, but they were unable to learn where he resided, or could be found, and do not know whether he is now living or not. The company was informed and believe, that before the filing of the memorial in this cause, he went to the State of Florida, and afterwards to South America, and then to China, but could get no definite information as to his whereabouts; for these reasons, his evidence could not be, and has not been, obtained on behalf of the claimant in this cause. (P. 148.)

Exall said:

> Col. Julian A. de Lagñel preceded me as superintendent. I was his assistant superintendent. I can not say where he is, other than this: When I returned from Mexico to the city of New York, in the spring of 1868, I saw him in this city, which was then his headquarters. He was *unmarried*, I believe, and had no fixed or permanent residence. Soon afterwards *he engaged in business which took him to the State of Florida*, and I saw no more of him. I have been reliably informed and believe that he afterwards went to South America, and thence to China, and has not returned to this country. (P. 149.)

Knowing, as we do now from De Lagñel, the true history of the company's operations at Tayoltita,

can we hesitate to conclude that Collins swore falsely when he said that the company made "*diligent inquiry*" to find De Lagñel "for the *purpose of obtaining his deposition?*"

De Lagñel says that Garth, the treasurer, and Mr. Hearn, then president of the company, were informed of his antecedents when he applied to the company for employment, and he thought "Garth certainly knew" where his family lived. At any rate, they knew his indorsers, Rev. Mr. Hawkes, Moses Taylor, president of the City Bank, and Thomas L. Beare, *who had known him from childhood.* (Pp. 491, 492.)

Did Collins's "*diligent inquiry*" extend to these prominent gentlemen, who had, only four years before the memorial was filed, recommended De Lagñel to Garth and Hearn? Certainly Collins and Ely, if acting in good faith, would have made inquiry of Garth, the mainspring of the company and its organ of communication with the mines, and would, in that case, have been referred by him to the above sources of information. Then, again, De Lagñel was introduced to Garth by Col. James R. Branch, of Richmond, a well-known man in that community. (P. 478.) It is hardly possible that Collins or Ely would have failed to find De Lagñel if he had followed these clues and had wanted to find him.

After De Lagñel's return from the mines, and after Exall's return also, these two friends met in

New York somewhere between the fall of 1868 and September, 1870, and De Lagñel, at Exall's request, "went before a lawyer" and testified as to something he doesn't remember, but surmises it might have been Exall's claim against the company. (P. 491.) We know it had nothing to do with La Abra's claim against Mexico, *because De Lagñel never heard of that until some time in 1878*, when he received a telegram from the Mexican minister, asking him, "in the name of truth and justice," to identify the letter book of the company (pp. 491, 492), and was then, for the first time, informed of the claim by the Mexican consul.

On June 15, 1868, Exall wrote Granger from New York that "De Lagñel is at Fort Hamilton." (P. 289.) On July 18, 1868, Exall says, in a letter to Granger: "Before leaving New York the other day I went down to Fort Hamilton to see De Lagñel; he seemed much pleased to meet with me. *I spent some hours with him very pleasantly.*" (P. 290.) In this letter he alludes to De Lagñel's wife as "*a fine woman*," but in his subsequent deposition in rebuttal he says that in 1868 De Lagñel "*was unmarried, I believe*, and had no fixed or permanent residence." (P. 149.) That Exall told this deliberate untruth is not surprising, but it *is surprising* that he *never told De Lagñel about his terrible experiences at the mines.* (P. 491.) The latter says he never had any conversation with Exall touching

"the condition of affairs at the mines or his reason for leaving there." In the pleasant hours he passed with De Lagñel and his wife at Fort Hamilton not a syllable was uttered by Exall about his *persecutions* in Mexico and, finally, his *expulsion* from the country!

It is apparent that Collins and Exall both knew where to find De Lagñel. Exall certainly did when he wanted his testimony, and when they testified he had gone to Florida, they knew he was the purser of a ship plying between New York and Fernandina, Fla., and in New York every few days (p. 490), and when they said they were informed he had gone to China, they knew he had entered the service of the Pacific Mail Steamship Company (p. 490). It is extremely improbable that they would have known some of the main facts of De Lagñel's whereabouts without knowing the rest.

Under these circumstances, was it not incumbent on Collins to state precisely what efforts he had made to find De Lagñel, that it might appear whether he had acted in good faith or not?

SEIZURES OF MULE TRAINS.

This item of claim, always absurd, is in the light of the new evidence demonstrably false. It was an affront to the intelligence of the Commission to maintain that the company went on acquiring and losing by capture mule train after mule train,

when it could hire all the transportation it needed, for, as De Lagñel said, "*most everybody*" had mules to hire. (P. 609.)

When De Lagñel tells us the company *at most* owned "*twelve mules*," "not that many all the time, but that is the largest number I ever knew, *that is the number of pack saddles we had*," and that, with the exception of one or two that had strayed away or been stolen, he turned them over to Exall (p. 489), argument on the subject is at an end if the testimony of this most respectable witness is to count for anything.

Bartholow, whom he went down there to succeed, and who swore that it was "*absolutely necessary for the company to own and work large numbers of mules*," and that two of the company's trains were captured, never told De Lagñel of mule trains that belonged to the company or of the detention even of such, except "a hired train," which "*was released*" on complaint to the authorities. (P. 489.)

Is it open to debate that, if the company had been the possessor of mule trains and been despoiled of them, the fact would have come, inevitably, to the knowledge of Sundell and Torres? The former says, however, that his company, Durango, and La Abra owned *no pack mules* and that La Abra owned "from 8 to 10 *riding mules*," and that he *never heard of any mule trains belonging to or in the employ of La Abra being taken by the military forces of the Liberal*

army. (P. 526.) Torres says that La Abra "had three or four mules that were used for riding purposes," and got its supplies by means of "packing mules" belonging to different parties "from La Noria and from other places." He, who was born near Tayoltita, and had lived there for over sixty years and was a miner by occupation, says he never heard of seizures by the military authorities of mule trains in the employment of La Abra. (Pp. 550, 551.) Was it possible for such occurrences to have happened and for him not to have even *heard* of them?

The witnesses for Mexico, Aguirre (p. 117), Molina (p. 117), Nuñez (p. 118), Sloan (p. 120), Refugio Fonseca (p. 128), Manjarrez (p. 121), and Sandoval (p. 131), say, some that the company hired all its mules, and others that it owned three or four or a dozen, and never more than twenty at the outside. These little discrepancies enhance, rather than impair, the effect of this testimony.

It is gratifying to find that the new evidence affords the much-spurned Mexican witnesses more than substantial corroboration, thus showing the falsity and foulness of the aspersions cast on these witnesses by Exall, Adams, and Bartholow, who were, in our judgment, unworthy to unloose the shoe's latchet of the humblest of them. Indeed, it would seem that about the only reliable testimony submitted to the commission was that adduced by

Mexico, and this, we take leave to say, in the face of the truly remarkable estimate placed on the claimant's evidence by the distinguished umpire.

Bartholow swears that two entire mule trains loaded with provisions and supplies belonging to the company were captured and appropriated "by the military authorities of the Mexican Republic," and that William Grove, a valued employee, who had charge of one or both of the trains, was murdered.

Bartholow says that he applied to the proper military authority for redress, but without avail. We give his own words:

> I visited said commander at San Ygnacio, whose name, I think, was General Guerra, or General Parra—I do not now recollect which of the two was then commanding at that point. I knew them both, and a number of other officers of said army, whose troops had committed similar depredations, and had levied other "prestamos" upon the Abra Company, while under my superintendence. I related the circumstances attending said captures, or robberies from the company, and of the murder of the company's quartermaster, who was acting as captain of said mule trains, to said commanding general, but he refused the protection I asked on behalf of the Abra Company, and he refused to order a return of said mules and supplies, or to indemnify the company for the same. He stated that he had no authority to indemnify the company, and that it was too late to restore the property, as it had passed out of his control. He also refused to instruct the authorities at San Dimas, and Tayoltita, as I requested him to do, to protect the Abra Company from further depredations upon its property and mines in that district. (P. 170.)

Contrast this testimony with the following extract from his own report to the company, as superintendent, dated Tayoltita, March 7, 1866:

> In my last letter I informed you that one of my employees, William Grove, esq., formerly of Saline County, Mo., was miss-

ing, and I feared had been waylaid and murdered; since then my worst fears have been realized, for after a search of two weeks his body was found buried in the sand on the bank of the Piastla River, some 10 miles above the mouth of Candalaro Creek, near where he had been murdered. At the time of the discovery of the body it was in such an advanced state of decomposition that it was impossible to ascertain the manner in which he had been killed. His mule, pistol, and clothing have not yet been found; the mule is, however, likely to turn up, as it had our hacienda brand "U. S." on the left shoulder. *These facts were promptly laid before the commander of the liberal troops at San Ignacio, Señor D. Jesus Vega, who took great interest in the matter and promised to use all the means in his power to discover the murderers and bring them to justice, and he has had arrested and placed in confinement two men charged with the crime, and his soldiers are in pursuit of the third. These we are assured will be tried by court martial, and if found guilty will be summarily executed.*

Mr. Grove, I think, lost his life by imprudence in talking; he had resided in Mexico for six or seven years, spoke the language quite fluently, and ought to have understood the character of the people. I had *nominally* purchased a train of pack mules in Mr. Grove's name and sent him to San Ignacio to obtain a permit for them to pack for me, and a guaranty that they would not be taken by the army. He succeeded in getting these documents, *and was on his way home to take possession of the mules and start them to packing;* he passed the night previous to his death at the house of one Meliton, at Techamate, the place where you will recollect we stopped for dinner on our first trip up, where we had quite a quantity of watermelons. This man Meliton had a bad reputation; was some years ago convicted of murder and robbery and sentenced to be executed, but got clear by bribery. Grove told this man of his purchase of the pack train, and that he was to pay $4,000 for it, and was on his way to take possession of it and start it to work, thus leaving the impression that he had this sum of money with him. Now, whilst I do not think that Meliton committed the murder, I have no doubt of his having planned it and arranged for it to be done, and the imprudence of Mr. G. in telling this man the circumstances above mentioned, in my opinion, was the cause which led to his murder, which was effected between Techamate and Tenchuguilita, about midway between the two places. (Pp. 211, 212.)

It thus appears that Grove, instead of being in charge of one of the trains or of both—*Bartholow*

states it both ways—was, when murdered, traveling alone and "*on his way home to take possession of the mules and start them to packing.*" Indeed, Clark, the claimant's swift witness, says that Grove, when slain, was "*traveling alone, and not in charge of his train of mules.*" (P. 63.)

It is perfectly clear that this murder had no connection with any property loss to the company, and that what Bartholow says about the harsh and improper conduct of the military commander, to whom he reported the murder and so-called capture, is but another instance of the shocking recklessness of statement to be found among the claimant's witnesses.

To think that this man, Bartholow, should have had the audacity to swear that "two entire mule trains, loaded with provisions and supplies," were captured at the time Grove was murdered, and that even the promise of indemnity was denied by the Mexican authorities!

We propose now to give some extracts from the official reports and letters of the superintendents to show that the company did not own, but *hired*, pack trains to do its transportation.

In his letter to the company of February 6, 1866 (p. 203), Bartholow says:

> Mr. Griffith. Wm. Grove (a new man from Saline County, Mo.), and Dr. Hardy has charge of all the pack trains; each manages and controls a train; this is necessary for the reason that *if some American* in the employ of the company *is not constantly with the trains*, there is great danger, if not a certainty, that the animals would be taken by the military authorities, and *besides, I could not get the Mexicans to pack for us unless I agreed to do this;* besides, with this arrangement I have a guar-

anty that my men, animals, and effects will not be interfered with.

Here we see that THE PRESENCE OF AN AMERICAN WAS SUFFICIENT TO PROTECT A PACK TRAIN FROM SEIZURE, and that Mexican packers were doing the company's transportation!

Again, in the same letter (p. 204), speaking of the disturbed condition of the country, he remarks that "it was with the greatest difficulty *that I could get anyone to agree to pack at all.*"

In his letter of February 5, 1866 (p. 205), he refers to "the owners of a train of mules *who desire to enter into the employ of this company.*"

In another letter, dated February 21, 1866 (p. 207), he speaks of meeting "174 mules loaded with my machinery," and then says he will need a certain amount of money "*to pay the packers I need.*"

In a letter dated February 28, 1866 (p. 209), we find the following:

Some weeks since I sent to Santiago Papasquia for a lot of mules to pack for me. Some came promptly, and are now in my employ, and to-day about 70 more arrived, all of which I fear I can not employ, yet think I need 20 to 30 of them to finish up my freight from below. If you need the rest, and will come over to-morrow or next day, we can make, doubtless, a satisfactory arrangement to use the whole lot in copartnership, as it is desirable, in my opinion, to retain them. If, however, this does not suit you, I will use all in transporting salt and corn from below. Please attend to this promptly.

In another, dated March 4, 1866 (p. 209), Bartholow says: "The bearer of this letter has a pack train of 64 mules, which I have hired to pack corn for Mr. Rice and myself from San Ignacio."

In another, dated April 13, 1866 (p. 222), he says: "I have plenty of packing for your mules here at fair prices, and will have for several months."

In his letter of May 5, 1866 (p. 224), turning over the superintendency of the mines to De Lagñel, Bartholow says: "*The company own 12 mules.*"

De Lagñel, in his letter of June 6, 1866 (p. 227), to W. G. S. Clarke, says: "*Your* train bringing, etc., has just arrived." Again, in the same letter, he says: "To feed *your* train down, I have advanced $20 to the same party."

May it not be said now that the claim for seizures of mule trains has been effectually disposed of and no longer requires attention?

THE ABANDONMENT THEORY.

The absurd theory that the mines became a total loss to the company by *compulsory* abandonment was started as the foundation for a claim that Mexico should return to the company the capital invested in the purchase of the property. But what sane man would have exchanged a *vested right* in what he believed to be a bonanza for the mere *lottery* of a speculative claim for damages for the loss of that right? The fact that such an exchange was made here goes far to establish the fraud charged in the bill. As has been said already, the company could only have lost the possession of its property by expulsion from Mexico. This Government, if

appealed to, would not have tolerated the idea that the loss of possession drew after it any loss of right.

But the after-discovered evidence completely overturns this theory, for it shows that Exall left in Granger's hands the following delegation of authority, in the form of a letter, placing him in charge of La Abra's affairs and property:

TAYOLTITA, *February 26, 1868.*

Mr. JAMES GRANGER.

SIR: As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York, to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of the La Abra S. M. Co., together with its property.

You are invested hereby with all power confided to me, of course acting in all your transactions with an eye to the interests of the company.

This will to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf.

Very respectfully,

(P. 281.) CHARLES H. EXALL,
Adm'r La Abra S. M. Co.

There can be no doubt that Granger considered himself as duly empowered by that paper to represent the company as Exall's substitute, for in August, 1868, we find him writing the following letter with reference to taxes due on the company's property:

[Translation.]

TAYOLTITA, *August 12, 1868.*

Señor Don REMIGIO ROCHA.

DEAR SIR: I have received the communication calling upon this company to pay $52.50 each month for taxes imposed by the legislature of the State, and presume it to be correct, *but as I am only acting in the absence of the superintendent, and as there is no money nor effects to pay this tax,* I beg you to wait until the month of November, *at which time said superintend-*

ent is to come, and then the sums due by this company on account of this tax will be paid.

Your most humble servant,

(P. 282.) SANTIAGO GRANGER.

As late as September, 1873, the record shows that Granger applied to a court at San Dimas for the purpose of having Exall's letter of authority done into Spanish by Sundell under the court's sanction, alleging as a reason that the document in question "*serves him as proof of his being in charge of said affairs by proxy.*" (Pp. 530, 531, 336, 337.)

About three years later we find Granger, the sub-agent, presenting himself before the judge of first instance at San Dimas, for the purpose stated in the following paper:

Letter of Santiago Granger to the judge of first instance at San Dimas.

I, Santiago Granger, a native of England, and a resident of this place, present myself before you and say, that I have disposed of the articles hereinafter specified, property of the Abra Mining Company, in the district of Tayoltita, in order that you may be pleased to appoint assessors to place a valuation upon them, so that at any time when the company shall call on me, I may be able to deduct the amount of their value from what said company owe me. They are as follows: 1 counter for store, 1 range of shelves, 3 large doors, 5 arrobas of iron.

(Signed.) SANTIAGO GRANGER.

SAN DIMAS, *June 4th, 1871.*

(P. 121.)

Even after Granger was compelled to leave the mines for employment elsewhere, he continued to exercise what supervision he could over the company's interests.

This practical construction of Exall's letter is a guide to its meaning of no small value.

Both Collins (p. 147) and Exall (pp. 151, 152) try to show that Exall never made Granger his sub-agent, for lack of power to do so; but certainly Exall took a different view of the superintendent's powers when he was constituted De Lagñel's sub-agent, on the eve of the latter's departure from Mazatlan on a business trip (pp. 260, 261), and signed a business letter J. A. De Lagñel, *per C. H. Exall* (p. 261). Here is a *stubborn fact* which these witnesses did not expect to encounter. Certainly De Lagñel's powers were not greater than Exall's.

In harmony with our view is Sundell's testimony that Exall openly said, in January, 1868, or that it was then generally known, that he was going to New York "*to consult with the company.*" This is confirmed by the fact that the letter of attorney is dated February 26, 1868, and the inference to be drawn is that Exall did not leave in March, 1868, in precipitate flight, but to carry out a previously formed purpose. (P. 521.)

In view of all the evidence on the point, the chairman of the Senate Foreign Relations Committee declared his conviction to be "a fixed one" that Exall left Granger at the mines "as the agent" of the company, and that this "was legally done." (Sen. Rep. No. 2705, p. 681.)

On March 15, 1868, Exall wrote Granger from Mazatlan as follows:

> In reference to the La Abra affairs, I think we will have to look to this country. The property can not be sold without legal authority from the company. This I think I can get. Am induced to believe so by the company's letters received. In fact, it would be difficult to get a purchaser without authority to sell. I am certain of being able to get some power from them so as to enable us to secure ourselves. I will communicate with company from San Francisco, and, if best, will go on immediately to New York *and return as soon as possible.* Please keep everything in the best possible shape and secure, and by no means let my books be seen or known. It is to the interest of us both to do so; therefore I know you will act as I advise in the matter. I have been quite sick since being here, and at one time was afraid wouldn't be able to go up. Am now much better, and hope to be off to-morrow. The line is so arranged now that you can get from New York to Mazatlan in twenty days, *so I will not be gone very long.* Please act prudently in this matter, and in a few months I think I will be able to put us both right. Be sure and write me by next steamer to San Francisco. I will make arrangements in San Francisco or elsewhere. Direct care of Weil & Co. You will get their number from the books.
>
> Hoping that you may get along all right, and *that I will be soon again with you with means to satisfy ourselves.* (P. 287.)

On April 7, 1868, Exall wrote Granger from San Francisco as follows:

> I have determined to go on East; think it best I should do so, as the affairs of the company can and must be decided at once, *and I can, from New York, get to M. in twenty days;* so you see this is the speediest way to settle the thing. *For God's sake keep everything in as good shape as possible, and in event we have to fall back on the property it will be in such condition that we may be able to realize something from it.* It is hardly necessary to give any further instructions, as I have previously written all that I could on the subject, and you, knowing as well as myself, must be guided by your judgment. I will sail on the 4th or 5th by way of Nicaragua—steamer on this side, *Moses Taylor;* Atlantic side, *Guiding Star.* May probably have a rough time. I have been considerably bored since being here and wish to get off as soon as possible. *I will either come on back immediately from New York or write.* (P. 287.)

On May 8, 1868, Exall writes Granger from New York, urging him "*to keep all secure at the mines*," and, if possible, "*get prorogas on mines where times are expiring; keep them secure, if possible, in some way.*" In the same letter he directs Granger to extend Ariza's privilege for three, four, or six months, and *not to extend Guadalupe's more than a month at a time.* (P. 288.) In a word, *the hated Exall still continued in control, by his avowed subagent, Granger,* and it makes no difference what ulterior purposes the two may have had, the point being that, after the Mexican authorities had *driven La Abra away,* as claimed, Granger was permitted to remain in possession *under its name!*

This evidence gives "superfluous death" to the already riddled credit of Exall and Collins. Its inconsistency with the former's account, as witness, of his *hegira* requires no comment.

THE LETTER-PRESS COPY BOOK.

In this book, happily discovered for the cause of truth and justice, we find the life of the company reflected as in a mirror.

It furnishes the only evidence in the case, coming from the claimant's side of the issue, that agrees and harmonizes with the conduct of the company and its representatives, and therefore must be true, though it make every other witness false. Let us examine this book in connection with the other evidence.

It will be remembered that Exall, in his second deposition, in rebuttal, said that "*early in 1868*" he beneficiated "about 20 tons" of ore, with a result of $17,000, which he "put into the general fund of the company and used in said works" (p. 156), and yet this witness, in his letter to the company of January 24, 1868, sends up a piteous wail for money. Everything had stopped; no means at hand to save the mines from denouncement; debts right and left and nothing wherewith to pay them. "What is your intention?" says he. "Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them." (P. 281.)

But as *nothing was doing at the mines*, what had become of the $17,000? Is it not as clear as noontide that this money had no existence save as the *coinage of Exall's brain?*

After reading Exall's testimony with reference to the persecutions and indignities he suffered at the hands of the Mexican authorities, it is a surprise to find him writing to the company on October 6, 1867, *and while the alleged outrages were going on*, that "*there are no difficulties about authorities*, boundaries, or anything else concerning the mines and hacienda, provided there is money in hand, and *money must* be sent." (P. 275.)

A more dismal picture than this letter presents is scarcely conceivable. The writer represents him-

self as without "money, stock, or credit." He had worked as economically as possible, and "cut down expenses to the lowest point," and yet "*what little good is taken out amounts to almost nothing.*" He had "exhausted all the ore that I [he] had on hand *that was* worth working. That which I [he] worked was *very poor and the yield small.* The La Luz, on the patio, WON'T PAY TO THROW IT IN THE RIVER. I have had numerous assays made from all parts of each pile; *the returns won't pay.*" Again, "I am compelled to keep men in mines *which yield nothing*, merely to hold them," but this, he adds, must be stopped and the mines be left unprotected.

On November 17 and December 18, 1867, he continues these appeals for succor, and protests the desperation of his situation. Referring to certain drafts on the company, he says, "For God's sake telegraph to and pay them," and "My position is extremely embarrassing, and I know not what to do, and will have to be guided entirely by circumstances." (Pp. 276, 277.)

But the voice of distress was not altogether from the mines, for we find Garth, the company's treasurer, writing to Exall from New York, on May 10, 1867, that "the affairs of the company *here* are much embarrassed; a few of the directors have advanced all the money to carry on the operations and have been nearly ruined by it, and are not able to afford any further aid from here, and look anxiously to be

reimbursed very soon from the products of the mine, and it is hoped that your best energies will be exerted to afford relief." (P. 282.)

Another letter to Exall from the same source, dated two days later than the one just quoted from, is practically a confession of the company's insolvency, for it frankly admits inability to meet De Lagñel's draft for $5,000 in favor of the Bank of California, which, we may add, went to protest and never has been paid to this day. (Pp. 282, 283.)

Another letter to Exall from the treasurer, dated May 30, 1867, is full of amazement and incredulity at the beggarly results from the costly adventure. "If, however," says the writer, "the ores are indeed worthless, I don't see that any process of working will be of any avail, and *have the worst fears that our enterprise will, after all, be fruitless of good.*" (P. 283.)

Another letter from the treasurer to Exall, dated June 10, 1867, and indited after De Lagñel's return to New York, says: "*The account that Colonel De Lagñel gave us of the quality of the ores on hand was most unexpected and a fearful blow to our hopes.*" Then follows the refrain, "No money in the treasury" and "no means of raising any," and a reference to the dishonor of De Lagñel's draft. (P. 284.)

In a letter dated July 10, 1867, the treasurer informs Exall that "appeals have been made in vain for aid to the stockholders." He acknowledges receipt of some sample bullion, but fears "that it is

worth but little more than what it cost to get it from the custom-house to Mazatlan and the expenses on it here." He cautions Exall "not to go on and get out large quantities of worthless ore at great expense, thinking all the time it was rich metal." Writing under the depression of this dismal news, he says: "*If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned.*"

Another letter from the same to the same, written ten days later, tells Exall that his proposed draft for $3,000 will not be met, as the company has no money. (P. 285.)

A letter from the treasurer to Exall, dated August 10, 1867, contains the following:

> We observe with deep regret and disappointment that you were making but little progress in beneficiating the ores now on "patio," and that the yield had not improved. *This is a severe blow to the enterprise*, as we had expected long before this time that you would not only be in position to sustain yourself, but to remit us enough to pay off the large indebtedness here. We learn with deep regret that you are likely to become embarrassed in getting supplies for the rainy season. Long before this reaches you it will be seen that the draft of De Lagüel, drawn for $5,000, was protested and returned to Mexico, and that you must try and pay it: and it is well that you did succeed in negotiating the draft for $3,000 you proposed, as we could not have paid it, and you must manage to get along with what resources you have, as we can not give you any aid from here. I would advise you to try and beneficiate what ore you have on hand, *if it will pay to do so*, and to cut down expenses to the lowest point, merely taking care of the interest and property of the company as best you can until further instructed; and in meantime give us complete account of expenses, debts, and full balance sheet of your books to latest period; and also give us your opinion in full of the prospects of the mines, values of the ores, cost of raising and working, with yield of same, as requested in former letters. (P. 322.)

This was followed by another, which closes the series, and is as follows:

NEW YORK, *October 10, 1867.*

Mr. CHARLES H. EXALL,
Tayoltita, Mexico.

DEAR SIR: Since ours of 30th September we have yours of 5th August from Mazatlan. Note contents. We are deeply pained to find that you are not well, and that you are still without favorable results in the enterprise from which we all had such high hopes of success. I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources of the mines and mill to keep you going and to relieve you of debts heretofore contracted. It is not possible for us to direct any particular course for you, but only to urge you to try and work along as well as you can, cutting down expenses and avoid embarrassing yourself with debts. The Bank of California has again sent Col. D. Lagñel's draft here for collection, but it was not possible to pay same, and it will have to return to Mexico, and we do hope you will be able to make some satisfactory arrangement to pay it.

Very truly, yours,

D. J. GARTH, *Treasurer.*

I inclose letter from your friend.

(P. 322.)

The letter book has been used with great effect by Mr. Foster in his able argument below on the facts. He shows, from the letters of the company's superintendents, the absurdity of the claim for lost ores. (Pp. 93–111). As to the claim for lost profits, Mr. Foster demonstrates, from Exall's letter of August 6, 1867, that the company were suffering a loss of $10.28 *on every ton of ore reduced!* (P. 104). *Ex pede Herculem!*

In the light of this letter book, the course of the company and its agents is in perfect harmony with our experience of human conduct. It is natural that the company should have finaliy concluded to

wash its hands of the adventure, and stop sending good money after bad, if its affairs were in the condition displayed in the letter book; on the other hand, upon the claimant's theory of the richness of the mines, its conduct is inexplicable according to any known test of human motive.

So impressed were the Committee on Foreign Relations of the Senate by the letter-press copy book as an instrument of evidence that in their thorough and able report, to accompany Senate bill No. 2632, Fiftietl. Congress, second session, made on March 1, 1889, they use the following emphatic language with reference to the contents of that book:

> In the opinion of the committee, the correspondence between the company's superintendents and agents at the mines in Mexico and the managing agent of the company in New York, accompanying this report, is sufficient, considered alone, to show the whole claim of the company to be fraudulent, and the claimant's testimony before the Mixed Commission, so far as it tended to fix the responsibility for the company's loss upon the Mexican Government, to have been rank perjury to show that the company had abandoned its mines because they did not pay for working; that the officers and agents of the company in New York had refused to furnish any more money to the superintendents at the mines, and that the company was bankrupt.
>
> The idea of making a claim against the Mexican Government by the company, judging from this corresponence, appears to have been conceived long after the abandonment of the mines by the company, to have been a gross fraud in its inception, to have been based upon fraudulent allegations supported by false swearing and manufactured testimony; and it is impossible, in the face of the correspondence covering the period when the company was making preparations to work its mines in Mexico and while they were being worked, to conceive that the officers and agents of the company in New York were not active participants in the fraud. (S. Report No. 2705, Fiftieth Congress, second session, pp. VII, VIII.)

The story of disaster and mismanagement in the

letter book is epitomized by appellant's witness, Garth. Having spoken of the constant drain upon the company by the mines, and been asked if "there was no return current from the mines to the company," he replied: "NONE, EXCEPT A LITTLE PIECE OF BULLION SILVER THAT CAME FROM THERE. I THINK IT BROUGHT ABOUT $300." (P. 717.)

In accord with this are complainant's witnesses, De Lagñel, Sundell, and Francisco Torres, to whom we now turn.

Soon after De Lagñel reached the mines an assay was made "which was very satisfactory, so as to give us high hopes." (P. 484.) There was another one after the new mill was started, which was satisfactory, but "*nothing comparable with the other.*' (*Ib.*)

The result was that up to the time De Lagñel left "*the yield had been gradually diminishing*," "*the same amount of rock was taken out, but not the same amount of silver ore*" (p. 483), or, as the Mexican witnesses say, it was mostly *tepetate* or worthless ore that was dug out by these ignorant miners to be crushed in the new mill.

Of the mines purchased, La Abra was regarded by Garth "*as the treasure house.*" (P. 487.) De Lagñel tells us the sort of "treasure house" it was. Being asked if any work was done in La Abra in his time, he gave this dismal reply:

> There was no work done there save on one occasion, when I

ordered the head miner, *when we found the metal beginning to be exhausted*, to go into the La Abra to see what he could get, and if it were possible to put the gang of men there with results. *He picked up a few little pieces of ore and came back and said nothing could be done.* (P. 487.)

And yet the distinguished umpire says there was "*nothing rash*" in the claimant's adventure!

Frederick Sundell, a Swedish mining engineer, who was assayer for the Durango company from 1865 to the end of 1868, and resided at San Dimas (p. 517), and was familiar with the mineral district of Tayoltita and knew Exall well, says the reason Exall left "*was because the mine did not pay to work, and the company would not furnish him any more money*," and that such was the general understanding among Americans and Mexicans. (P. 522.)

Exall never brought any results to witness's attention after the mill began to work. (P. 523.) What are we to think, then, of Exall's testimony that he beneficiated 20 tons of ore, with a result of $17,000, shortly before his *flight?* Evidently Sundell never heard of it. On the contrary, he tells us that when he revisited the company's hacienda in 1890 he found that the ores that Exall had piled up there had been *thrown into the river as so much rubbish.* (P. 525.)

The evidence of Francisco Torres is especially satisfactory. The witness was 66 years old, was born in San Dimas, and has lived there always, and had been a miner for the twenty-five years then last

past. (P. 547.) He was employed by Del Valle and Manjarrez as a refiner, and says that they got good results from El Rosario, which yielded rich but not abundant ores, but that it ceased to pay to work it (pp. 548 and 553), and that it had been abandoned for two years at the time of the sale. (P. 553.) But La Abra Company did not work that mine at all. The Abra mine was denounced by Manjarrez, after the claimant abandoned work there, but he died without accomplishing anything.

La Luz had a spurt of success, and Garth and Bartholow arrived on the scene just in time to become its victims; but soon this yield degenerated to worthless *tepetate*, which was the character of the ores that Exall got from there and left piled up at the hacienda, and for which a huge indemnity is demanded in the memorial. (P. 550.)

The witness says that Del Valle and Manjarrez lost $40,000 in trying to extract wealth from La Luz. (P. 548.) The witness speaks with the feeling of one who from his own had "learned to melt at others' woe," for he confesses to having lost $9,000 by yielding to the deceptive appearances of that mine after it "had been abandoned by the Americans." (P. 554.) Says the witness: "*The result was that I lost money and abandoned the mine.*" (*Ib.*)

The whole business of mining is manifestly precarious, a mere lottery. A rich vein may be struck, but whether it means profit or disappointment no

one can tell. As the distinguished umpire said, "It may be great, small, or nothing, and may be but *a mere snare to lead one on to utter ruin.*" In these pithy words we have an epitome of all that has been written about the uncertainties which beset this branch of industry.

A labored attempt was made in the court below to show that Sundell and Torres are unworthy of belief, and, we assume, will be repeated here.

Our estimate of the attempt and our reply to it may be indicated by a citation from Starkie:

> It is here to be observed that partial variances in the testimony of different witnesses on minute and collateral points, *although they frequently afford the adverse advocate a topic for copious observation*, are of little importance unless they be of too prominent and striking a nature to be ascribed to mere inadvertence, inattention, or defect of memory. (Ev., vol. 1, 468.)

But there is a serious side to the attack to which the quotation does not point, and which can not be passed over.

It was sought, in argument, to impeach Sundell and Torres, by showing discrepancies, so called, between their depositions in this suit and depositions which had been previously given by them elsewhere, without having called their attention, on cross-examination, to the alleged discrepancies and given them an opportunity to explain.

This court has strongly condemned such a practice *under all circumstances.* (*Mattox* v. *United States*, 156 U. S., 237, 244–250.)

It may be asked, before turning to another mat-

ter, whether any disparagement of appellee's witnesses could possibly benefit appellant so long as the letter book, the testimony of Treasurer Garth to the failure of the adventure and the incompetency of its managers, and *the testimony of appellant's own conduct before a motive existed to fabricate the claim*, all bear witness in support of the bill.

EXALL'S EXPLANATORY AFFIDAVIT.

The Weil and La Abra awards being before Congress in connection with charges of fraud, Gen. James E. Slaughter, as agent of Mexico, printed and circulated freely among the Members of both Houses of Congress a pamphlet containing a petition setting up fraud in the awards, and, *inter alia*, extracts, more or less full, from the correspondence in the letter book, and also copies of certain letters from Garth to Exall and from Exall to Granger. (Pp. 668–671.)

This correspondence, the Senate committee say, was alone sufficient to establish the fraudulent character of the claim, and, unexplained, certainly destroyed the testimony of Exall, which, notwithstanding the attempt to belittle it, is the mainstay of the case, and comes right home to the claimant. It will be remembered that it was during his service as superintendent that occurred the alleged cruelties and persecutions which *drove* La Abra out of Mexico.

The consternation caused by the explosion of the Slaughter petard is easily read between the lines of the deposition of Mr. Sumner Stow Ely, taken in this suit. Mr. Ely was here—in Washington—at the time, attending to the business of the company, and appears to have been prompt in trying to meet the crisis.

He was the general counsel of the company and drew the articles under which it became a corporation, and we gather from his testimony that his experience as a lawyer in the city of New York had been considerable.

The question naturally suggests itself, what an intelligent lawyer, representing a large claim which he believed to be just and supported by honest testimony, would have been likely to do under the same circumstances?

Would he not have taken prompt steps to examine Exall, with full opportunity to Mexico and the United States to be present and participate in the examination?

This, however, Ely did not do. On the contrary, he took perhaps as suspicious and as irregular a course as could well be imagined. He posted off to New York to see Exall, *with some notes or memoranda* in his pocket of things stated in the letters printed in the Slaughter pamphlet, and when asked why he did not take with him a copy of the

pamphlet itself for Exall's information, gave this silly reply:

> One of these pamphlets fell into the hands of Mr. Bartholow, who showed it to me. I could not take it to New York with me, because he had to return it to the gentleman who gave it to him. *So that I had to tell him [Exall] what the contents were.* (P. 660.)

When examined before the Senate committee he merely said that he left the pamphlet in Washington, making no reference whatever to Bartholow and his refusal to let him take the pamphlet with him to New York. (P. 661.)

When pressed to disclose why he had not procured a copy of this pamphlet strewn in the halls of Congress, he makes the puerile and manifestly untruthful answer that he "could not go around at random to the Members, perfect strangers, and ask them if they had a copy to let me have." (P. 662.) A shy, faint-hearted New York attorney, indeed! *Rara avis in terris, nigroque simillima cygno!*

But, what is more remarkable still, the resourceful Bartholow could, apparently, neither beg nor borrow nor *purloin* a copy of Slaughter's precious compilation for use in New York!

When asked if he thought he was doing a proper part by his client not to secure a copy of the pamphlet for Exall's information, he made this absurdly untrue answer:

> I believed I could tell him substantially enough about those letters so that he would know whether he ever wrote them or

not; and if he did, whether there was any explanation that he could give. (P. 662.)

According to Mr. Ely, Exall, with no more information of the contents of these letters, so vitally concerning him, than he had received from Ely, went to work and prepared an affidavit whose object was to explain away the contradictions between letters which he had not seen and might not have written and his testimony before the commission.

The substance of this affidavit is that all letters of deponent's conflicting with his testimony were the result of an understanding between him and the abandoned Granger to induce the company to give up the adventure as hopeless that they might take hold of it themselves, it being evident to them, deponent pretends, that the company would not be allowed to keep its footing much longer in Mexico.

Of course the original of that affidavit, as the Adams contract, has disappeared from the files of the Senate Foreign Relations Committee, *and a copy made by Ely* is produced to take its place.

It is unnecessary to examine that scandalous document with particularity. No statement emanating from that source is entitled to the slightest respect or consideration. Indeed, Mr. Ely's account of the manner in which the affidavit was made is alone sufficient to show that the deponent was a mere tool in his hands.

Recurring to the deposition of Sumner Stow Ely,

the witness says that all he had to do with the preparation of Exall's affidavit was to suggest a change of its order, so as to make it more connected.

We regret to say, however, that we are not inclined to accept this *modest* disclaimer of Mr. Ely's, for the strange account he gives of himself in connection with the Slaughter pamphlet more than warrants the suspicion that he and he alone concocted the affidavit and that Exall *blindly swore to it.* We do not believe that Exall was capable of writing the affidavit.

If our suspicion that the original was in Ely's handwriting could be confirmed, there might not be much difficulty in accounting for its disappearance.

We do not incline to the opinion that Mr. Ely would have done anything so idiotic as to attempt to get Exall's explanation of his letters without first putting the Slaughter pamphlet in his hands. He knew that according to the usual and proper course Exall should meet and explain each of the letters in the Slaughter pamphlet attributed to him, but this he knew also would be full of peril, *as the explanations must needs be false, and as the greater the particularity the greater would be the chances of detection;* so he made up the absurd story of his inability to get a copy of the pamphlet to take to New York, in order to account for the sweeping language of the affidavit and its failure to notice the letters with particularity.

Now when it is remembered that Sumner Stow Ely occupied the fourfold relation to the company of counsel, secretary, treasurer, and stockholder, it would seem impossible to hold the company to be without responsibility for the perjury committed by him in connection with the Slaughter pamphlet.

EXALL'S LETTERS TO GRANGER.

These letters do not, it is claimed, stand on the same footing as the letters in the letter book from the officers of the company appertaining to its business, for the latter are the very words of the company itself, and where they contain statements against the interest of the company are undoubted evidence; but it is contended that the letters in question do not appertain to the company's business and are not evidence any more than other statements of third parties not made under oath.

But are they not admissible for the purpose of contradicting and impeaching Exall's evidence? They certainly contain statements directly in conflict with his testimony. Exall was informed of them and no doubt saw them, for they are printed in full in the Slaughter pamphlet, and then made the affidavit in which he attempted to explain away the discrepancies between them and his evidence, thus laying the foundation for their introduction as completely as though he had been put on the stand and asked if he had written them.

There is nothing more telling in the case than the conduct of the stockholders who had advanced considerable sums to the company after De Lagñel's report to the company on his return to New York. What that report was can be readily inferred from Garth's letters to Exall of May 30 and June 10, 1867 (pp. 383, 384), in which the writer despairs of success in the enterprise, and says that De Lagñel's account "*was most unexpected and a fearful blow to our hopes.*"

It was in May that De Lagñel returned to New York (p. 482), and on the 8th of the following month John H. Garth, representing himself and the other stockholders who had made advances, instituted a suit against the company in his own name in the supreme court of New York for the sum of $53,653.50, and recovered a judgment *by default* for that amount on July 3, 1867. (Pp. 465–470.)

We pause for a moment to look at some of the facts connected with that proceeding. The suit was brought by the standing counsel of the company, Britton & Ely, the latter of whom, no doubt, would have considered it far from businesslike to continue to stand by a bankrupt client when a fee could be made by going over to the creditors who were hunting it down.

The complaint and notice to answer were served

on the treasurer of the company, David J. Garth, who, together with George C. Collins, the president, had *nominally* transferred to the plaintiff his demand against the company, the two thus *appearing* to have no interest in the suit adverse to the company, when in fact *they were covertly plaintiffs*, Collins to the extent of $22,235.57, and Garth to the extent of $1,990.40, at least.

The voice of the company being thus *stifled* by this conspiracy between the Garths, Collins, and Ely, a judgment by default against the defendant was, of course, the result. It was a judgment, however, which the court would have promptly set aside on being made acquainted with the circumstances in which it was rendered. It was obviously a *fraud* on those of the stockholders who had not been engaged in throwing good money after bad, and was intended as the basis for the enforcement against them of a personal liability for the debts of the company under the law of New York (Rev. Stat., vol. 3, § 10, p. 735, ed. 1863, by Edmonds), which made each stockholder of a mining company personally liable to an amount equal to that of the stock held by him so long as the capital of the company was not fully paid up. The capital of La Abra Company was fixed by its charter at $300,000, but Ely testified before the Senate committee that "there was a quantity of stock that was never issued" (Sen. Rep. No. 2705, p. 964), and the offi-

cial reports of the company show this to be the fact. (Pp. 463–465.) In a word, this mock suit was a fitting prologue to the drama of fraud that was soon to follow.

This rush for a plank on which to save themselves from the sinking ship tells the whole story. It was the act of desperation which might have been expected of such men. It was the culmination of a scheme that was conceived in folly. It was a confession of record by those who had control of the company that their hopes and expectations had been wrecked. It was a formal declaration of the company's insolvency. It was "a brief chronicle and abstract of the times" at Tayoltita, which fully accounts for Exall's departure from that hamlet without the necessary cash to take him to New York. It shows to a demonstration that before Exall's *persecutions* had begun the company was beggared and already too far gone to be affected by the violence of enemies.

GREAT SIGNIFICANCE OF SOME SMALL FACTS.

The circumstances connected with Exall's final departure from the mines, noticed above here and there, have irresistible force when taken together.

1. He left the mines with certain "*American friends*," but who they were is *still unknown*. The failure to produce these "friends" or account for

their absence is irreconcilable with the honesty of the claim and amounts to *suppressio veri.*

2. When Exall reached "Mazatlan" in his so-called *flight*, he borrowed $250 from Mr. Peña to take him home. Does not this little circumstance tell the story of the abject penury that existed at the mines? Is it probable that he would have borrowed that small sum if he had not needed it? Peña & Co. were the concern with which La Abra had been doing a large amount of business, and if Exall had not stood in need of the money, but had intended to swindle these friends of his and the company, he might easily have obtained a larger sum, especially as the company did not owe the concern a cent, as Mr. Peña himself says. (P. 103.)

3. Although Mr. Peña was examined by the company (pp. 102, 103), he was not asked to state what Exall said with reference to his *flight* when he borrowed the money. It is most damaging that no witness was examined in Mazatlan to reproduce the story that Exall must have told when he reached that point, if he had any story to tell.

4. Exall, when he arrived at Mazatlan, did not go before the American consul and make a declaration or protest of the outrages which, it is claimed, had been inflicted on him and the company.

5. When he got to San Francisco he neither made a protest nor telegraphed the company that he had been driven from the mines, although it

would be at least a month before he could make the circuitous journey to New York by way of the Isthmus.

6. When he surprised the company by his appearance in New York he was still without any written statement of what had occurred, and made no such statement *until a year and nine months* after his pretended expulsion from the mines, when he gave his first deposition. It nowhere appears that he had even taken the precaution of making memoranda of the matters to which his depositions relate.

7. Shortly after Exall's return to New York in the spring of 1868 he met De Lagñel there, and in July, 1868, visited him at Fort Hamilton, but De Lagñel testifies that he had *no conversation with Exall as to the condition of affairs at the mines or his reason for leaving there.* (P. 491.)

How truthful, how overwhelming is *this language of Exall's conduct!* It is a testimony which completely supports the letter book, and makes plain many things that, upon appellant's theory, require a miraculous solution.

The testimony thus furnished by Exall's *conduct*, so to speak, was given before the Abra Company had any thought of urging a claim against Mexico; indeed, except in so far as it relates to De Lagñel, before the company had heard of its so-called expulsion. It therefore enjoys the merit of having been

given at a time when there was no motive for misrepresentation, whereas the depositions were taken after the claim was started, and, what is more, under the auspices of Sumner Stow Ely and Alonzo W. Adams.

To these small facts may be added another of some significance. When Ely met Exall in the street soon after his return to New York, he expressed surprise at seeing him, and remarked that he "supposed he [Exall] was in Mexico, making silver bricks for La Abra Company," thus showing that he, Ely, had heard nothing of the so-called reign of terror at Tayoltita and was entirely at a loss to know what had brought Exall back. (P. 655.) If Exall was driven out of Mexico, as he pretends, it seems impossible that he should have broken the news to Ely, as the latter swears, by flippantly remarking "*that he had been compelled to skip out between two days.*" (P. 655.)

Can any man read Ely's account of what passed between him and Collins, the first time they met after Exall's return, without at once concluding that it is a sheer fabrication? Here it is:

> Answer. About May, 1868, I was going down Wall street and I met George C. Collins, who was then president of La Abra Company, *and I stopped and chatted with him a moment*, and he said to me, "*Do you know Exall is back?*" I said, "Yes; he called on me *a few days ago.* He said, "*I suppose* he told you what brought him back and the shape of things down there." I said. "Yes; *in a general way.*" *I did not have time to get many details from him.* He said, "Things are in pretty bad shape down there, are they not?" I said, "I should think they were,"

and he said, "What can the company do about it?" I replied that to seek redress from a foreign government was a long, tedious, and, I had no doubt, an expensive proceeding, and I thought the company would have to charge the whole thing over to profit and loss. (Pp. 654, 655.)

Exall had been back "*a few days*," and yet the *first* meeting of the counsel of the company and its president was *a casual* one in Wall street! The counsel had heard about matters at Tayoltita "*in a general way*," but didn't have time for "*many details*"! Is not this rank perjury?

FRAUD AND PERJURY BROUGHT HOME TO THE COMPANY.

The *very memorial itself* filed before the Commission was a *conscious act of fraud* on the part of the company, which necessarily knew by the reports it had received from its superintendents at the mines, as shown by the letter book, that, aside from certain conceded facts, each paragraph of the document was false. Apparently the officers of the company shrank from swearing to it or stamping it with the common seal. The president, Mr. George C. Collins, had not yet been taught by Mr. Sumner Stow Ely that he had capabilities as an affidavit maker which were equal to any he possessed as tea merchant or vestryman. Accordingly the memorial was verified by the affidavit of one who signed it as counsel, and who describes himself as "*attorney in fact*," and refers to the memorialist as "*now absent from the District of Columbia*," a peculiar statement,

considering that the memorialist was a New York corporation and, according to a well-understood principle, could not have been anywhere else than in that State.

We are aware that under the rules of the Commission a memorial might be verified by an attorney in fact, in case of the memorialist's absence from the District, but it is extremely improbable that a claimant would be satisfied with such a verification of an *honest* claim for $3,000,000 against a foreign government.

But the verification of the memorial here was a fraud on the rule—first, because the "attorney in fact" swears that the statements of the memorial are true "*so far as they are stated from his own knowledge*," and that he believes them to be true "*so far as they are stated upon information derived from others*," whereas all the allegations of the memorial are stated as absolutely true, and it not appearing what was sworn to from knowledge and what from belief, it resulted that the memorial was *not verified at all;* and secondly, because, according to the evidence (p. 707), the counsel, who describes himself as "*attorney in fact*" in the jurat, only held the relation of attorney at law to the company.

Obviously, these circumstances connected with the affidavit have a tendency to show fraud in the conception of the claim.

So this great claim was presented to an interna-

tional tribunal with less solemnity than a New York corporation would be expected to use in bringing suit for a small debt in some petty court!

According to the annual reports of the company, required by the law of New York, it appears that in 1866 the amount of capital paid in was $76,000, and that the amount paid in for each of the years 1867 and 1868 was $157,000. (Pp. 463–465.)

But when Mr. Collins, the president of the company, came to make his first affidavit in support of the memorial, in 1870, he stated that the company had obtained "from subscriptions for and sales of its stock two hundred and thirty-five thousand dollars." (P. 38.)

After Collins's death, which occurred in February, 1875, attention having no doubt been called to the discrepancy between the annual reports of the company and the deposition of Collins as to the amount of capital paid in, Mr. Sumner Stow Ely, in January, 1877, caused a report of the company to be made stating the amount of cash capital at the sum named by Collins. But no explanation is offered for the change. This report was the first that had been filed *in nine years.*

An explanation was attempted in Ely's testimony before the Senate committee and in this case, from which it appears that *Ely drew Collins's affidavit*, and that the amount of the capital paid in was stated by Collins at $235,000 as the *currency* equivalent of

the $157,000 originally paid on the stock *in gold.* Among the *data* furnished by Collins for the affidavit was, *Ely says*, the fact that the company kept, for some unassigned reason, a gold and a currency account of the stock subscriptions. But Mr. Ely does not say why the fact thus furnished him was not carried into the affidavit he prepared for Collins to swear to. There can be no doubt, however, that the information was withheld to leave the way open for the fraudulent contention that the sum of $235,000 represented *gold*, which was at a considerable premium at the time Collins and Ely concocted the affidavit, in September, 1870.

It was a fraud on the Commission and the umpire not to state that the amount of $235,000 was a valuation of the capital stock in a fluctuating paper currency, so that any award for the claimant on account of stock might be adjusted to the relation between the debased currency and gold and it is equally a fraud for this company, now that the currency is at par, to be making "continual claim" at the Treasury door for $235,000, in gold, as indemnity for the loss of $157,000, in gold.

Clearly the company is directly implicated in this double fraud.

It would seem impossible to deny successfully the responsibility of the Abra Silver Mining Company for the miscarriage of justice brought about

by the perjury and other corrupt practices of Bartholow, Adams, Sisson, Ely, Collins, Exall, and others, as hereinbefore particularly stated, unless it be held that such practices by agents and officers of a corporation, acting in its name and behalf, can never affect it. That, however, is impossible, because Congress, by the act of 1892, has made it the law of this case that the company shall not profit by the corrupt acts, if any, of its officers or agents in obtaining the award out of which this controversy has grown.

But whether the company was actually or constructively aware of the methods that were being used by its agents or attorneys, it is clearly inadmissible for it to repudiate their frauds and perjuries on the one hand and demand the fruits of them on the other. Under the familiar principle of ratification, the company can no more evade the justice of this suit than if it had expressly authorized the fraudulent practices by which the award was obtained. In a word, the company has made the fraud of its agents its own. As this court says in *Castle et al.* v. *Bullard* (23 How., 172, 189): It does not lie with one to claim property through the fraudulent act of another, whether partner or agent, *without being affected by that act the same as if it were his own.*

If this discussion has been much drawn out, it should be remembered that the subject handled has

given this Government and the Republic of Mexico profound concern for nearly a score of years, and that the decision of the issue involved will certainly be felt in the relations between the two Governments.

WM. A. MAURY,
Special Assistant to the Attorney-General.

APPENDIX A.

AN ACT to amend and enlarge the act approved June eighteenth, eighteen hundred and seventy-eight, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the fourth day of July, eighteen hundred and sixty-eight."

Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the case of La Abra Silver Mining Company, has heretofore reported that the "honor of the United States requires" that said case "should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud," but that "the executive Government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress;" and

Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that said case "be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to said claim may be fully investigated:" Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in further execution of the purpose of said act the Attorney-General of the United States be, and he is hereby, authorized and directed to bring a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award or any part thereof in this act mentioned, to determine whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the

whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns; and, in case it be so determined, to bar and foreclose all claim in law or equity on the part of said La Abra Silver Mining Company, its legal representatives or assigns, to the money, or any such part thereof, received from the Republic of Mexico for or on account of such award; and any defendant to such suit who can not be found in the District of Columbia shall be notified and required to appear in such suit by publication as the court may direct, in accordance with law, as applicable to cases in equity.

SEC. 2. That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said Mixed Commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

SEC. 3. That an appeal from any final decision in such cause to the Supreme Court of the United States may be taken by either party within ninety days from the rendition of such final decree, under the rules of practice which govern appeals from said court; and the Supreme Court of the United States is hereby authorized to take jurisdiction thereof and decide the same.

SEC. 4. That in case it shall be finally adjudged in said cause that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, was obtained through fraud effectuated by means of false swearing, or other false and fraudulent practices of said company or its assigns, or by their procurement, and that the said La Abra Silver Mining Company, its legal representatives or assigns, be barred and foreclosed of all claim to the money or any part thereof so paid by the Republic of Mexico for or on account of such award, the President of the United States is hereby authorized to return to said Government any money paid by the Government of Mexico on account of said award, remaining in the custody of the United States, that has

not been heretofore distributed to said La Abra Mining Company or its successors and assigns, which such court shall decide that such persons are not entitled, in justice and equity, to receive out of said fund.

SEC. 5. That, during the pendency of said suit and until the same is decided, it shall not be lawful for the Secretary of State to make any further payments out of said fund, on account of said award, to La Abra Silver Mining Company, or its legal representatives, attorneys, or assigns; and in case it shall be finally adjudged in said cause either in the Court of Claims or in the Supreme Court of the United States that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, or any definable and severable part thereof, was not obtained through fraud as aforesaid, then the Secretary of State shall proceed to distribute so much of the said award as shall be found not so obtained through fraud, or the proceeds thereof remaining for distribution, if any, to the persons entitled thereto.

Approved, December 28, 1892. (27 Stat., p. 409.)

APPENDIX B

ACTS OF CONGRESS APPROVED DURING "HOLIDAY RECESSES," 1862-1897.

Public, Ch. 4, Dec. 25, 1862 (12 St., 632):
An act to amend an act entitled "An act to provide internal revenue to support the Government and to pay interest on the public debt," approved July 1, 1862.

Public, Ch. 5, Dec. 27, 1862 (12 St., 633):
An act to facilitate the discharge of disabled soldiers from the Army, and the inspection of convalescent camps and hospitals.

Public, Ch. 6, Dec. 31, 1862 (12 St., 633):
An act for the admission of the State of West Virginia into the Union, and for other purposes.

Public, Ch. 5, Dec. 26, 1866 (14 St., 374):
Land grants to Oregon. An act to amend an act entitled "An act granting lands to the State of Oregon to aid in the construction of a military road from Eugene City to the eastern boundary of said State."

Public, Ch. 4, Dec. 22, 1868 (15 St., 266):
An act to amend an act entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes," approved July 20, 1868.

Private, Ch. 5, Dec. 22, 1869 (15 St., 435):
An act to relieve certain persons of all political disabilities imposed by the fourteenth article of the amendments to the Constitution of the United States.

Public, Ch. 4, Dec. 23, 1869 (16 St., 61):
An act making appropriations to partially supply deficiencies in the appropriations for the service of the fiscal year ending June 30, 1870.

Public, Ch. 5, Dec. 23, 1869 (16 St., 61):
An act making a temporary appropriation for the preservation of the work upon the improvement of the Des Moines Rapids in the Mississippi River.

Joint Resolution No. 5, Dec. 23, 1869 (16 St., 368):
Claims for steamboats, etc., impressed into the military service of the United States.

Joint Resolution No. 6, Dec. 23, 1869 (16 St., 368):
Joint resolution of tribute to the memory of George Peabody.

Public, Ch. 12, Dec. 24, 1872 (17 St., 400):
An act authorizing the construction of railroad bridges across the Mobile River and other navigable streams tributary to Mobile Bay, in accordance with the acts of the legislature of the State of Alabama, and to establish them as post roads.

Public, Ch. 13, Dec. 24, 1872 (17 St., 401):
An act for the reduction of officers and expenses of the internal revenue.

Public, Ch. 14, Dec. 24, 1872 (17 St., 404):
An act to provide for holding adjourned terms of the supreme court of Arizona.

Public, Ch. 15, Dec. 24, 1872 (17 St., 404):
An act to authorize the National Bank of Lyons, Michigan, to change its location and name.

Public, Ch. 17, Dec. 27, 1872 (17 St., 404):
An act to quiet the title to certain lands in the State of Missouri.

Joint Resolution No. 1, Dec. 24, 1872 (17 St., 637):
A resolution extending the time for the presentation and selection of models of a colossal statue of the late Admiral Farragut.

Public, Ch. 3, Dec. 31, 1873 (18 St., 1):
An act making appropriations for extraordinary expenses of the naval service. (In all, amounting to $4,000,000.)

Private, Ch. 2, Dec. 27, 1873 (18 St., 529):
An act to remove the disabilities of Thomas S. Bocock, E. J. Harvie, and Daniel Trigg, of Virginia, and John H. Reagan, of Texas.

Private, Ch. 4, Jan. 3, 1874 (18 St., 529):
An act to correct the enrollment of an act entitled "An act for the relief of P. W. Standefer."

Public, Ch. 7, Dec. 24, 1874 (18 St., 293):
An act reserving for the use of Congress one hundred and fifty copies of the Revised Statutes authorized to be printed by the act of June 20, 1874.

Public, Ch. 8, Dec. 28, 1874 (18 St., 293):
An act to enable the supreme court of the District of Columbia to proceed with jury business.

Public, Ch. 9, Dec. 28, 1874 (18 St., 293):
An act to provide for the authentication of the Revised Statutes of the United States and for preserving the originals of all laws in the Department of State.

Public, Ch. 10, Dec. 28, 1874 (18 St., 294):
An act for the relief of certain settlers on the public lands.

Public, Ch. 12, Jan. 1, 1875 (18 St., 294):
An act suspending so much of the act entitled "An act reorganizing the several staff corps of the Army," approved June 23, 1874, as applies to contract surgeons.

Public, Ch. 1, Dec. 24, 1875 (19 St., 1). Cong. Rec., Forty-fourth Congress, first session, pt. 1, p. 250. Recess Dec. 20–Jan. 5, 1876:
An act to extend the duration of the Court of Commissioners of Alabama Claims.

Joint Resolution No. 1, Dec. 21, 1878 (20 St., 487):
Joint resolution providing for the distribution of the Revised Statutes of the United States to the Post-Office Department.

Joint Resolution No. 2, Dec. 21, 1878 (20 St., 487). Cong. Rec., Forty-fifth Congress, third session, pt. 1, p. 340. Recess Dec. 20–Jan. 7, 1879:
Joint resolution making an appropriation for the purpose of paying the necessary expenses incurred in investigating the origin and cause of epidemic diseases in the United States.

Joint Resolution No. 3, Dec. 21, 1878 (20 St., 487):
Joint resolution extending time for Joint Committee on Transfer of Indian Bureau to report.

Public, Ch. 1, Dec. 20, 1879 (21 St., 59):
An act authorizing an allowance for loss by leakage or casualty of spirits withdrawn from distillery warehouses for exportation.

Public, Ch. 2, Dec. 22, 1879 (21 St., 59):
An act relating to printing impressions from portraits and vignettes.

Private, Ch. 3, Dec. 24, 1879 (21 St., 531):
An act for the relief of Herman Hulman and Crawford Fairbanks, of the city of Terre Haute, Ind.

Public, Ch. 4, Dec. 23, 1880 (21 St., 311):
An act to authorize the Secretary of the Treasury to change the name of the yacht *Stephen D. Barnes*, of Philadelphia.

Public, Ch. 5, Dec. 23, 1880 (21 St., 312):
An act to provide a suitable pedestal to the monument erected in honor of the late Admiral Farragut in Washington City.

Public, Ch. 6, Dec. 23, 1880 (21 St., 312):
An act to change the name of the schooner-yacht *Nettie* to *Nokomis*.

Public, Ch. 7, Dec. 23, 1880 (21 St., 312):
An act amending section 1852 of the Revised Statutes of the United States. (Sessions of Territorial legislatures limited to sixty days.)

Public, Ch. 8, Dec. 23, 1880 (21 St., 312):
An act to amend an act entitled "An act to incorporate the National Fair Grounds Association."

Public, Ch. 9, Dec. 23, 1880 (21 St., 313):
An act granting permission to the Chamber of Commerce of New York to erect a statue on the subtreasury building in the city of New York.

Public, Ch. 10, Dec. 23, 1880 (21 St., 313):
An act to authorize the construction of a fixed bridge over the St. Marys River, and for other purposes.

Private, Ch. 11, Dec. 23, 1880 (21 St., 601):
An act granting an increase of pension to J. J. Purman.

Private, Ch. 12, Dec. 23, 1880 (21 St., 601):
An act for the relief of Charles W. Abbot, a pay director, and W. W. Barry, a passed assistant paymaster in the United States Navy.

Private, Ch. 13, Dec. 23, 1880 (21 St., 602):
An act granting an increase of pension to Mrs. Julia Gardiner Tyler, widow of Ex-President Tyler.

Private, Ch. 14, Dec. 23, 1880 (21 St., 602):
An act increasing the pension of Margaret S. Heintzelman.

Joint resolution No. 3, Dec. 26, 1883 (23 St., 265):
Joint resolution relating to the surrender by George Washington of his commission as commander in chief of the patriot forces of America.

Public, Ch. 7, Dec. 27, 1884 (23 St., 280):
An act detaching Grundy County, Tenn., from the southern division of the district of East Tennessee and attaching it to the middle district of said State, and for other purposes.

Private, Ch. 6, Dec. 25, 1884 (23 St., 615):
An act for the relief of Juliet H. Palmer.

Joint resolution No. 2, Dec. 26, 1885 (24 St., 339):
Joint resolution filling existing vacancies in the Board of Regents of the Smithsonian Institution.

Joint resolution No. 3, Dec. 26, 1885 (24 St., 339):
Joint resolution authorizing the Secretary of the Interior to use a portion of the contingent fund to fit up rooms for the Commissioner of Patents.

Private, Ch. 1, Dec. 26, 1885 (24 St., 653):
An act for the relief of Alexander R. Lawton, of the State of Georgia.

Private, Ch. 2, Dec. 26, 1885 (24 St., 653):
An act granting a pension to Julia D. Grant.

Public, Ch. 9, Dec. 23, 1886 (24 St., 353):
An act amending sections 4756 and 4757 of the Revised Statutes, relating to pensions to certain disabled persons who have served in the Navy and Marine Corps.

Public, Ch. 11, Jan. 3, 1887 (24 St., 354):
An act providing for the erection of a public building at Springfield, Mass.

Public, Ch. 12, Jan. 3, 1887 (24 St., 354):
An act to amend section 4414 of the Revised Statutes, relating to inspectors of hulls and boilers.

Public, Ch. 13, Jan. 3, 1887 (24 St., 354):
An act to amend an act entitled "An act to modify the postal money-order system, and for other purposes," approved March 3, 1883.

Public, Ch. 14, Jan. 3, 1887 (24 St., 355):
An act to extend the free-delivery system of the Post-Office Department, and for other purposes.

Public, Ch. 15, Jan. 3, 1887 (24 St., 356):
An act to authorize the construction of a bridge across the St. Louis River at the most accessible point between the States of Minnesota and Wisconsin.

Public, Ch. 16, Jan. 3, 1887 (24 St., 358):
For the relief of Myron E. Dunlap.

Private, Ch. 10, Dec. 23, 1886 (24 St., 881):
An act for the relief of Henry Martin.

Private, Ch. 17, Jan. 3, 1887 (24 St., 882):
An act for the relief of Pattison and Caldwell.

Private, Ch. 18, Jan. 3, 1887 (24 St., 882):
An act for the relief of the survivors of the exploring steamer *Jeannette* and the widows and children of those who perished in the retreat from the wreck of that vessel in the Arctic seas.

Private, Ch. 19, Jan. 3, 1887 (24 St., 883):
An act for the relief of Grafton Monroe.

Private, Ch. 20, Jan. 3, 1887 (24 St., 884):
An act granting a pension to Mrs. Barbara Fuchs.

Public, Ch. 7, Dec. 22, 1888 (25 St., 638):
An act making appropriations to supply a deficiency in the appropriation for public printing and binding for the fiscal year ending June 30, 1889, and for other purposes. (This includes an appropriation for observing an eclipse of the sun.)

Public, Ch. 8, Dec. 24, 1888 (25 St., 638):
An act authorizing the President to appoint and retire Andrew J. Smith, late colonel of the Seventh United States Cavalry and a major-general of volunteers.

Public, Ch. 18, Jan. 1, 1889 (25 St., 639):
An act granting to Citrous Water Company right of way across Papago Indian Reservation in Maricopa County, Ariz.

Private, Ch. 9, Dec. 24, 1888 (25 St., 1251):
An act for the relief of George S. Thwing.

Private, Ch. 10, Dec. 24, 1888 (25 St., 1251):
An act to increase the pension of Mrs. Ella M. Grover.

Private, Ch. 11, Dec. 24, 1888 (25 St., 1252):
An act granting a pension to Mrs. Louisa Ward.

Private, Ch. 12, Dec. 24, 1888 (25 St., 1252):
An act granting a pension to Lemuel S. Skinner.

Private, Ch. 13, Dec. 24, 1888 (25 St., 1252):
An act granting a pension to Nancy A. Hays.

Private, Ch. 14, Dec. 24, 1888 (25 St., 1252):
An act granting an increase of pension to Caroline M. McDougal.

Private, Ch. 15, Dec. 24, 1888 (25 St., 1252):
An act for the relief of George W. Graham.

Private, Ch. 16, Dec. 25, 1888 (25 St., 1253):
An act granting a pension to Catharine Tate. (Became a law Dec. 25, 1888.)

Private, Ch. 17, Dec. 25, 1888 (25 St., 1853):
An act granting an increase of pension to William H. H. Welsh. (Became law Dec. 25, 1888.)

Public, Ch. 33, Dec. 26, 1890 (26 St., 698):
An act authorizing the city of Albany, in the county of Linn, State of Oregon, to construct a bridge across the Willamette River, in said State.

Public, Ch. 34, Dec. 26. 1890 (26 St., 700):
An act to authorize the Bowling Green and Northern Railroad Company to bridge Green and Barren rivers.

Private, Ch. 35, Dec. 26, 1890 (26 St., 1330):
An act granting a pension to Adele Jones.

Private, Ch. 36, Dec. 26, 1890 (26 St., 1330):
An act granting a pension to George H. Rider.

Private, Ch. 37, Dec. 26, 1890 (26 St., 1331):
An act for the relief of James B. Guthrie.

Public, Ch. 14, Dec. 28, 1892 (27 St. 409):
An act to amend and enlarge an act approved June 18, 1878, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, 1868."

Public, Ch. 15, Dec. 28, 1892 (27 St., 410):
An act to amend and enlarge an act approved June 18, 1878, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, 1868."

Public, Ch. 16, Dec. 28, 1892 (27 St., 412):
An act to authorize the Alabama Grand Trunk Railroad Company to bridge across the Tallapoosa and Coosa rivers.

Joint Resolution No. 7, Dec. 25, 1893 (28 St., 577):
Joint resolution relieving the employees of the Record and Pension Office who were injured in the Ford's Theater disaster from the operation of the law restricting the amount of sick leave with pay that may be granted by heads of Departments.

Public, Ch. 8, Dec. 24, 1894 (28 St., 595):
An act to amend the act entitled "An act to authorize the construction of a bridge across the Mississippi River above New Orleans," approved January 26, 1893.

Public, Ch. 9, Dec. 24, 1894 (28 St., 596):
An act making appropriation to supply an urgent deficiency in the appropriation for the fiscal year ending June 30, 1895, for public printing and binding.

Public, Ch. 10, Dec. 24, 1894 (28 St., 596):
An act making appropriations to supply urgent deficiencies in the appropriations for the Eleventh Census, and for other purposes.

Public, Ch 11, Dec. 26, 1894 (28 St., 596):
An act to amend section 8 of the act entitled "An act to authorize the construction of a bridge across the Contentnea Creek, at Grifton, Lenoir County, N. C., and to establish it as a post-road," approved August 23, 1894.

Public, Ch. 12, Dec. 27, 1894 (28 St., 597):
An act to establish a military park at the battlefield of Shiloh.

Public, Ch. 14, Dec. 29, 1894 (28 St., 599):
An act to amend section 3 of an act to withdraw certain public lands from private entry, and for other purposes, approved March 2, 1889.

Public, Ch. 15, Dec. 29, 1894 (28 St., 599):
An act to perfect the title to a quarter section of land in the town of Yuma, Colo.

Private, Ch. 13, Dec. 27, 1894 (28 St., 1022):
An act for the relief of the legal representatives of James C. Booth.

Private, Ch. 16, Dec. 29, 1894 (28 St., 1022):
An act to pension Mrs. Ann Bradford, mother of William K. Bradford.

Private, Ch. 17, Dec. 29, 1894 (28 St., 1022):
An act for the relief of Dollie E. Vedder.

Joint Resolution No. 2, Dec. 24, 1894 (28 St., 967):
Joint resolution extending time for report of Board of Engineers surveying routes from Lake Erie to the Ohio River.

Public, Ch. 3, Dec. 29, 1897 (U. S. Statutes, Fifty-fifth Congress, second session, p. 226):
An act prohibiting the killing of fur seals in the waters of the North Pacific Ocean.

APPENDIX C.

EXTRACT FROM THE DEPOSITION OF CAPT. C. B. DAHLGREN, TAKEN BY THE SENATE FOREIGN RELATIONS COMMITTEE. (Sen. Rep. No. 2705, Fiftieth Cong., 2d Sess., pp. 643, etc.)

Q. Were the interrogatories propounded by the consul?—A. No, sir; they were not. They were propounded by Gen. A. W. Adams, all of the questions; none were proposed by the consul.

Q. I continue the reading:

Question 1st. What is your name, age, birthplace, citizenship, residence, and occupation?

Ans. My name is Charles B. Dahlgren; I am 32 years of age; I was born in Harttsville, in the State of Pennsylvania, in the United States of America, and I am a citizen of the same.

Q. Is that substantially your answer?—A. Yes, sir.

Q. Then it continues:

I reside in San Dimas, in the mineral district of the same name, State of Durango, Mexico. My occupation is that of assayer, machinist, mining engineer, and general superintendent of the Durango Mining Company, whose hacienda and works are at San Dimas.

Question 2d. Are you or not a son of the late Admiral Dahlgren, of the United States Navy, and are you consul of the United States for the State of Durango, Mexico, lawfully appointed and confirmed, and as such recognized by the United States and Mexican authorities?

Ans. Yes; the late Rear-Admiral John A. Dahlgren was my father, and I hold the position suggested in the question, and I am so recognized by said authorities.

A. Now, in reply to that will you allow me to state what I recollect on that point?

Mr. FOSTER. Yes.

The WITNESS. (Reading:)

"The late Rear-Admiral John A. Dahlgren was my father."

I never said that. To the question, "Are you or not a son of the late Admiral Dahlgren, of the United States Navy?" my reply was, "I am."

Q. I continue the reading:

Question 3d. Do you know, and have you visited and examined

the mines, haciendas, and the late works and improvements of "La Abra Silver Mining Company," claimant in this case?

Ans. Yes; I know them, and have visited and examined them.

Is that, according to your best recollection, the answer you gave?—A. I never examined La Abra Silver Mining Company, although I have been over the works.

Q. Did you testify on that examination that you knew them and had visited and examined them? Did you testify in answer to General Adams's question whether you had visited and examined the mines? In other words, is the answer correctly reported?—A. No, sir.

Q. State wherein it is imperfect.—A. In answer to the question, "Do you know and have you visited and examined the mines, haciendas, and the late works and improvements of La Abra Silver Mining Company," I said I had examined the hacienda, because I took portions of that machinery, but "the late works and improvements of La Abra Silver Mining Company" I never examined. I passed over one or two of the mines, but I never examined them.

Q. I continue reading question 4:

Question 4th. Where are said mines and property situated; and of what did said improvements of claimant consist, and in what condition are they now?

Ans. The principal mines of "La Abra Silver Mining Company" are in "La Abra" Mountain, near Tayoltita, in said district of San Dimas. Their names are "El Rosario," "El Cristo," "La Abra," "La Talpa," "El Arrayan," "El Sauce," and some others in that district, whose names I have forgotten.

Q. Is that a correct answer to the question as you gave it?—A. No, sir; because I didn't know what mines they possessed.

Q. Did you ever know, by name, the mines whose names are here given? Did you ever know whether or not they belonged to La Abra Company?—A. No, sir; I knew that La Abra mine belonged to the company. I had been at El Arrayan, but I didn't know the names of the rest of the mines belonging to the company.

Q. And you did not attempt to give the names in that examination?—A. No, sir; nor their condition.

Q. (Reading:)

The condition of those mines were good when the Abra Company abandoned them; but since that time some of them have fallen in, and filled up with débris, and it would require large expenditures of money to reopen them, and to put them in as good condition as they were when the "Abra Mining Company" abandoned them.

Did you make any such declaration as that?—A. No, sir; because I knew nothing about it.

Q. Did you know anything whatever of the mines that

La Abra Company abandoned?—A. No, sir; I did not; only about the mill.

Q. (Reading:)

The improvements of that company consisted of a ten-stamp mill of the first class, a suitable mill house for the same, two haciendas—the "St. Nicolas" and the "Guadalupe"—a large number of outhouses for the residences of the company's employees and their families, constituting, in appearance, a small village.

Did you testify upon that examination anything about the improvements of the company?—A. I testified that they had a mill. I stated what the machinery consisted of, and that they had a large building for the residence of the superintendent and the American employees, and a large patio covered with ore.

Q. Did you mention the names of the two haciendas?—A. No, sir.

Q. Did you know the names?—A. I did not.

Q. (Reading:)

Together with supplies of every kind needed for carrying on silver and gold mining, and for beneficiating the same on a very large scale, all being situated near Tayoltita, in the said district of San Dimas.

A. I knew nothing about any supplies that they had or what they had on hand, except that they had expended a sum of money, which had been wasted or thrown away, as I had heard.

Q. And you gave no testimony at that time in relation to the supplies they had on hand?—A. I told General Adams that I knew nothing about what supplies they had had on hand except the common hearsay of the district.

Q. (Reading:)

The stamp mill and machinery have been torn to pieces, and parts of them sold and leased out for use in other places, and by other parties than their owners.

A. I said that I had taken away a number of pieces of machinery and moved them over to San Dimas.

Q. (Reading:)

Question 5. Who claims ownership of the said mines, haciendas, machinery, stamp mill, and other improvements of said "Abra Company;" or, if you know, state who, if any person, assumes or exercises the right to dispose of the said property of claimant, either by absolute sale, or by leasing out the same for use in other places than Tayoltita, and without authority to do so from claimant in this case? Will you please state all you know in relation to any such sales or lease of the mining tools, machinery, or the stamp mill of said company, or any part of the same, giving names, dates, and circumstances so far as you can recollect them.

Answer. Yes; the local authorities of San Dimas claim that the Mexican Government owns that property, and they have sold and leased some parts of it.

Did you make any such declaration as that to General Adams in answer to his question?—A. My reply to General Adams at that time was that when it came to the mill, the taking away of the machinery, etc., I did know about it, because it was I who took away the principal part of it.

Q. What I have read is:

The local authorities of San Dimas claim that the Mexican Government owns that property, and they have sold and leased some parts of it.

What did you testify?—A. I referred him to my correspondence with Judge Cipriano Quiroz de la O.

Q. We will come to that in answer to another question.—A. That was my reply. I referred him to my correspondence with that judge.

Q. Did you know at that time, or do you know now, that the local authorities of San Dimas claim that the Mexican Government owned that property?—A. I know that there has been some trouble between the company and the authorities; I supposed they were the local authorities; and when I asked permission of the judge to take away such of the things as I wished, he sent me down a letter which here is correct.

By Mr. KENNEDY:

Q. On what page?—A. That is on page 112.

Mr. LINES. In the testimony of some witness for Mexico.

Mr. FOSTER. Page 112 of the other book that has the letters in.

The WITNESS. Shall I read it?

Mr. FOSTER. No; because we will come to that in answer to another question.

The WITNESS. I referred him to that correspondence.

The CHAIRMAN. Shall I have the letters you first introduced this morning placed on file?

Mr. KENNEDY. That has not been done; but they will be kept subject to the inspection of counsel or the committee at any time.

The CHAIRMAN. In case other members of the committee might wish to see them.

By Mr. FOSTER:

Q. I continue to read:

I know, too, that a Mexican citizen, whose name is Francisco Torres, and who is now, and has been for the past year and more, the occupant of said haciendas and mining property and machinery of said company, claims ownership of the same; and that he works the mines of claimant successfully, by "Patio" process, a part of them under a "denouncement" made of the "Rosario" mine in the name of one Granger, an Englishman; and although the denounce-

ment is said to legally cover only one of the principal mines of said company, "El Rosario," which is probably the richest and most valuable of them all, he, nevertheless, works some of the other mines of said company in "Bonanza," and claims to own them all, as he told me when I was there, but a few months ago.

Please state whether that answer is correctly given as you testified at Mazatlan?

The WITNESS. That is in reply to question 5.

Mr. FOSTER. Yes; so far as I have read. Did you testify to anything as to the denouncement of the Rosario mine by Granger?

A. I believe I did. A mine in Mexico, when it is not worked, is subject to denouncement, and I knew that people had denounced it; but I don't think that they ever did much of it, and if they did, it was only with loss to themselves.

Q. Did you testify that the Rosario was probably the richest and most valuable of all the mines?—A. No, sir; I never did.

Q. Did you know anything about the value of the Rosario mine?—A. Only from tradition, that a great deal of ore had been taken out of it.

Q. But as to its then present condition; I mean at that time?—A. I knew nothing about it, sir.

Q. Did you state that he "nevertheless works some of the other mines of said company in bonanza?"—A. No, sir; I didn't testify that any mines were ever worked in bonanza when I was there.

Q. You made no such statement to General Adams?—A. No, sir.

By the CHAIRMAN:

Q. What is meant by the phrase working a mine in bonanza?—A. The consolidated Virginia mines on the Comstock were worked in bonanza by Flood and O'Brien.

Q. What is the signification of the phrase?—A. It means that they are paying, paying handsomely.

By Mr. FOSTER:

Q. In large quantities?—A. Yes, sir.

Q. Why did you mention the Flood & O'Brien mines being worked in Bonanza as an illustration?—A. Because they were yielding very rich results. They had rich ores in abundance.

Q. I proceed to read:

I know that parts of the stamp mill and machinery of "La Abra" Company have been taken away from the company's works at Tayoltita, and that the same are now in use, and have been for two or three years past, by other mines and mining companies in distant

places, some of them as far as three days' ride from Tayoltita. I know that a Mr. Hapgood, of Buena Vista, has a part of the claimant's mining tools and machinery.

Did you make any such statement as that in regard to Mr. Hapgood?—A. I might have made it, for this reason, that everybody who wanted any pieces of machinery went there and helped themselves. There was nobody to prevent them.

Q. I continue to read:

Mr. Hapgood has in use at his works in Buena Vista a "jack-screw," a large pair of scales, and many other things taken from said claimant at Tayoltita, and sold to him, as he told me, at a mere nominal value, by unauthorized persons. I visited Buena Vista in June last, where I saw and recognized those articles in use, and was told by Mr. Hapgood that he had been using them for his mining operations there for the past two years or more, and that they came from claimant's hacienda at Tayoltita. Buena Vista is about two days' ride, and for packing machinery it is three to four days' travel from Buena Vista to Tayoltita.

Is that substantially your statement given at that mine?

The WITNESS. Where is that?

Mr. FOSTER. That is on page 402.

The WITNESS. No, sir; and I did not recognize any of the articles. Mr. Hapgood told me that he had bought of different parties, and Granger also told me that he had sold a number of things belonging to the hacienda.

Q. Did Mr. Hapgood tell you from whom he bought them?—A. No, sir; but Granger told me that he had sold different pieces of machinery to different people, and that he had to do it to support himself.

Q. I continue the reading:

I know that the "retort" belonging to that stamp mill, and without which the whole mill is completely crippled for use, was taken from the La Abra Company's works at Tayoltita, and it is now in use by a Mexican citizen named *Juan Cuevas*, who works the same in the mineral district of Huahuapa, at a place called "Huahuapa," about three days by pack mules from Tayoltita.

A. No, sir; I took the retorts myself.

Q. Did you make any such statement to General Adams?—A. No, sir; I did not. I knew there was a small district called Huahuapa; but I took the two retorts out of that hacienda myself and packed them over to San Dimas, and put them up and used them.

By the CHAIRMAN:

Q. I understand you to state that you did not make the statement as there recorded in that statement that General Foster is reading from?—A. No, sir; I did not.

By Mr. FOSTER:

Q. (Reading:)

Said Cuevas has many other valuable parts of said machinery, or the iron taken from the same, together with large numbers of claimant's mining tools, which I saw there myself, and recognized as the property of claimant, adjusted to other machinery belonging to said Cuevas and in use. This was in or about the month of December, 1871.

Does that agree with your statement as made?—A. That was toward the end of 1871; yes, sir.

Q. (Reading:)

I spoke to said Cuevas about the matter, as I had to Mr. Hapgood, and he said it was the property of claimant.

A. That is false.

Q. You made no such statement?—A. That is false.

Q. State more explicitly its false character.—A. It says here that I spoke to said Cuevas about the matter. I did not know Cuevas.

Q. You had no conversation with him?—A. None. It also reads here:

And he also told me he had bought it of some one at a mere nominal price, and considered himself, he said, very fortunate in getting hold of such machinery so cheap.

By the CHAIRMAN:

Q. You deny having said that?—A. That is false. I never was in Huahuapa; so I couldn't say it.

By Mr. FOSTER:

Q. Did you state to General Adams, in answer to his question, that you recognized any of the property belonging to La Abra Company in Cuevas's possession?—A. No, sir.

Q. (Reading:)

I know of a number of thousand dollars' worth of said machinery and tools taken from the stamp mill and hacienda of claimant and now in use in San Dimas, and in a number of mineral districts adjoining the San Dimas district, and the same scattered over a territory of a hundred and fifty miles square, more or less, a part of which has been in use three years or more, and probably much of said machinery and tools worn out or nearly so.

How far does that conform to your answers as given to General Adams?—A. That does not conform to my answers. The common report was that this machinery had been taken by whoever wished it; it was there as abandoned, and I went over with my head machinist and head carpenter and four or five of my best men, and we looked over the hacienda, and we helped ourselves to such things as we wished; and in correspondence with

the judge I said that I was responsible for them and I would pay whoever came forward and demanded payment; and I signed my name to that offer to pay whoever came forward; I didn't care whether it was the Mexican Government or the company or any individuals.

Q. I continue to read:

I also know of other parts of said machinery belonging to "La Abra Silver Mining Company," at Tayoltita, having been sold to the company of which I am superintendent and for which we are now held responsible for its appraised value by the judge of first instance in the district of San Dimas, with the privilege of using it all until called for, at an appraised value for the use of the same. After making some inquiries in reference to the real ownership I heard, by common report in the district, that no individual had a right to sell and dispose of said property of claimant, but that its ownership was really with the Mexican Government; that a suit was pending before the joint commission of the two governments, for reclamation, at Washington, and that the acts of the local authorities in compelling claimant to abandon its mining enterprise, it was claimed, had given the real ownership of said property to the Mexican Government. Last spring or summer I found out the mistake made in buying some parts of the machinery of claimant from the wrong parties; I received a note from Judge Cipriano Quiros, the highest judicial authority in the district of San Dimas, last summer or spring, asking me to call upon him at his court room in San Dimas and settle the matter referred to with him. I called as requested, and the said judge then told me that only Mexican authorities could exercise any control over the said mines, stamp mill, machinery, and other property abandoned by "La Abra Silver Mining Company," at Tayoltita, and instructed me that the said purchase made of the tools and machinery named, and then in use by my company, was all right, if I would settle the matter with him, as representative of the Government of Mexico, for the value of said property; and as I was superintendent of the Durango Company, he said he was district judge—representing the Government of Mexico in this matter, could dispose of said property to me, by lease, or by sale, as he had, he said, received recent instructions on that point from the authorities of the supreme Government. Finally our interview ended by the sale or lease of said property for use by my company—the Durango Silver Mining Company—and he, Judge Quiros, made out to me, and he signed a written authority for me to take down and use for the benefit of my said company all of the machinery left there, including the stamp mill of claimant at Tayoltita, and to put it in use at San Dimas, making me responsible to him or to the Mexican Government for the appraised value of the same, or for its return to Mexican authorities by paying the use of it, to be appraised also. I can not remember the exact language of the lease or sale, but this is the substance of it: He explained at the same time that in case said "Abra Company" should get a judgment against Mexico, as it seemed likely they would do before said joint commission at Washington, that said mines, hacienda, machinery, and stamp mill then becomes the property of Mexico, and that it was, he said, his business as district judge, to look out only for the interests of Mexico, and to secure, as nearly as possible, the value of said machinery and stamp mill for the Government. He executed the lease or paper obligation authorizing me to take from Tayoltita such parts of said mining property as my company desired,

or all that was left of said stamp mill and machinery, if I wished it all, and to remove the same to San Dimas for use by the Durango Company; and he authorized me also to keep and make use of the parts of said machinery and tools which I had bought of irresponsible or unauthorized parties, holding me responsible to him—Judge Quiros—or Mexico, for the appraised value of that also, or for the value or its use, as I might elect. I have a part of said machinery, so leased to me, in use now at San Dimas, and I intend to remove the balance of said stamp mill and all that remains of the machinery and mining tools of said "Abra Company" to San Dimas, or to such other place in that district as may be most profitable to my company, in order to work said mill and machinery under the lease or written obligation referred to by and between said district judge and myself, to have the privilege of paying to Mexico the appraised value and owning the same, or of paying Mexico for the use of said stamp mill, tools, and machinery, and of turning over to the Mexican Government the same again when said suit shall be decided by the commission at Washington. I do not remember now the exact language of said sale or lease, for I have not seen it since the day it was taken, but I have stated its substance correctly.

Now, I will ask you to state how far what I have just read conforms with the statement by you to General Adams at Mazatlan.—A. My answer was in my letter to the judge, and the judge's reply to me, and I also said that I would be responsible to whoever should turn up as owners.

By the CHAIRMAN:

Q. Have you those letters?—A. No; I have not.

Q. Did you furnish them on that occasion to General Adams, or copies of them?—A. He had them with him, or copies of them.

Q. The answer you gave was what you had embodied in those letters?—A. Yes, sir; they are the letters and the answers.

Q. Then do I understand you to say that the statement made here is not correct?—A. It is made out of whole cloth.

By Mr. FOSTER:

Q. That is, it is altogether incorrect?—A. Yes, sir; it is made out of whole cloth.

Q. Did you ever state to Adams that the ownership of this property left by La Abra Company was really with the Mexican Government?—A. No, sir; because I didn't know with whom it was left.

Q. Did you ever state to him that a suit was pending before the joint commission of the two Governments for reclamation at Washington, and that the acts of the local authorities in compelling claimant to abandon its mining enterprise, it was claimed, had given the real ownership

of said property to the Mexican Government? Did you ever make any such statement as that to Adams?—A. No, sir; I never did. I did not know anything about it. I knew that there was a controversy, and I had heard it bandied about by both sides. But I did not know who were the partisans, and therefore I did not know, and I did not care. I wanted that machinery to start my enterprise, and took it and gave documents for it.

Q. Did Judge Quiroz ever make any claim to you of ownership of that property or the control of it by the Mexican authorities as the owner of it?—A. No, sir; he did not. He claimed the right of protecting the property against being pillaged.

Q. I now read from House Executive Document No. 271, Forty-ninth Congress, first session, page 112. I propose to read your application to the judge and his answer:

CHARLES B. DAHLGREN, resident of this mining district and general administrator of the American company entitled Durango Mining Company of New York, appears before you, making faithful and legal manifestation that being in need for his machinery used in the reduction of ores, of an iron wheel belonging to the machinery of La Abra Mining Company of Tayoltita, and which has been abandoned, he is going to dispose of said wheel, as also of its attachments. On making known to you what he intends to do, it is with the object that note of it be taken by the court in your worthy charge, so as to make it public, and that the value thereof be charged to him, to which effect he makes the necessary protestations to pay what he will be made responsible for either by a cash payment or by the return of said wheel.

He requests your honor to be pleased to keep this petition in your court for his responsibility at all times, and publish it, should you think necessary to do it.

CHARLES B. DAHLGREN,
Administrator of the Durango Mining Company of New York.
SAN DIMAS, *May twenty-third, eighteen hundred and seventy-two.*

Court of the first instance of San Dimas.

May twenty-third, eighteen hundred and seventy-two.

The above petition having been presented, the undersigned judge, taking into consideration that La Abra Company referred to has filed a claim against the Mexican Republic, this court does not authorize the petitioner, Mr. Charles B. Dahlgren, to dispose of the wheel above mentioned, and if he does it it will be under his own responsibility, to which end let this order be published and posted in prominent places of this district. This order is to be made known to Mr. Dahlgren for his information. The undersigned judge so decreed, ordered, and signed before the witnesses.

CIPRIANO QUIROZ DE LA O.

Witnesses:
E. PADILLA.
NICANOR PEREZ.

On the same date the citizen, Charles B. Dahlgren, was notified of

the above order, and said that he heard it. He signed it in the presence of the witnesses.

CHARLES B. DAHLGREN.
CIPRIANO QUIROS DE LA O.

Witnesses:
E. PADILLA.
M. CORDOVA.

How does this correspondence which I have just read conform to your recollection of what occurred at that time?—A. That is correct; that is the correspondence which ensued.

Mr. KENNEDY. Can you not read on, Mr. Foster, so as to make the record complete and show that testimony was taken and that an order was made? You will find it there.

Mr. FOSTER. Yes; I will if you desire. I continue the reading:

On the thirty-first of May, eighteen hundred and seventy-seven, by judicial order of this date a legalized copy was taken of this document, as also of the testimony relating thereto.

In witness whereof:

FELIPE SALCEDO.

Witnesses:
E. PADILLA.
LORENZO RODRIGUEZ.

Q. I continue to read question 6 from the deposition already cited:

Question 6th. Did said Judge Quiros receive from you any money or other thing of value for executing said bill of sale, or paper obligation, authorizing you to take down and make use of said company's stamp mill, tools, and machinery?

Ans. Yes; I sent him a present of twenty dollars in money, and I also sent him a week's rations for himself and his employés, which he received.

State whether that conforms to the answer you gave to General Adams at Mazatlan?—A. No, sir; I never said that; I never had any business transactions with Judge Quiros; I never paid him any money; and I never sent him any rations for himself or employees; never in the five years that I was there.

Q. Was any such question as that asked you by General Adams at Mazatlan? Did he ask you that or any similar question?—A. I don't know; I don't recollect; I don't think he did, because he was very tender-footed in approaching me on the money question.

By Mr. WILSON:

Q. Who was very tender-footed?—A. Gen. A. W. Adams. I had seen some of his transactions there, and I did not sanction them, and he held aloof about asking about any of my transactions at all.

By the CHAIRMAN:

Q. Do you refer to transactions in connection with this business?—A. Yes, sir; in regard to this business.

By Mr. FOSTER:

Q. I continue the reading:

Question 7th. Will you now please present to the consul the written obligation, referred to as having been executed by Judge Quiros, selling or leasing for use said property of claimant, in order that a certified copy may be taken by the consul and filed with this deposition at Washington?

Ans. It is not possible for me to present that paper called for by the question, because I did not bring it with me, as I would have done if I had known that it would have been required; or had I anticipated this examination, of which I had no knowledge or intimation until I was notified to appear here for examination. I left that paper, with the other papers of the Durango Mining Company, of which I am superintendent, all in charge of Dr. Stoeck, in my absence, and it would be impossible for me to produce the paper, as it is in the mountains, about two hundred miles from this place, and it would require probably a month to produce it here, if, indeed, it could be done at all, as the rebels have taken Mazatlan and the entire road to the district of San Dimas, since I came down here, and from the present political excitement and uncertainty I can not say when I may find it convenient or safe to return, as my feelings and views are known to be in favor of the Government or constituted authorities.

Please state how far that answer, as read, conforms to any statement you made on that subject at Mazatlan.—A. That name, Dr. Stoeck, should be spelled Storch. I do not recollect as to the rest of the answer, except the last part of it. It says:

I can not say when I may find it convenient or safe to return, as my feelings and views are known to be in favor of the Government or constituted authorities.

I returned that same day. That story is absolutely manufactured, for I returned that same day.

By Mr. WILSON:

Q. Returned where?—A. Up into the mountains of San Dimas from Mazatlan.

By Mr. FOSTER:

Q. Do you remember of his saying anything in regard to a paper of that character?—A. Yes, sir; I do.

Q. I will finish the answer:

I was fifteen days coming from San Dimas to Mazatlan, including delays and hindrances occasioned by political disturbances.

How far does that conform to your recollection of what you said?—A. (Referring to memorandum book.) I started on Monday, August 19, 1872, and I reached Mazat-

lan on Tuesday, September 3, 1872. That was on the fifteenth day I got in.

Q. I continue the reading:

Question 8th. Did the attorney of "La Abra Company," or other person, request you to come to Mazatlan and give this deposition, or was the giving of your testimony in this case suggested to your mind, or thought of by you, before you arrived in Mazatlan?

Ans. This question is answered by my reply to one of the foregoing questions. I think I have said that I knew nothing of the purpose of the attorney for "La Abra Company" to have me examined until notified in writing by the consul to appear and be examined in the case; nor had I the remotest idea of it. I came here with my sick wife and family, to get them on board the steamer for New York, and also to purchase supplies for the Durango Company.

A. That is correct, except that Adams himself asked me if I would testify.

By Mr. LINES:

Q. You got no notice in writing from the consul?—A. I don't recollect of any.

Q. You do not recollect getting a subpœna?—A. No; but in general effect that is correct. When I came down to Mazatlan I did not know that I was going to remain. I did not know that Adams was there, and it was not until I met him and he asked me if I would testify that I consented to remain for that purpose.

By Mr. FOSTER:

Q. You have no recollection of receiving any written notice or subpœna from the consul?—A. No, sir; I was in the consul's office every day, and in conversation it may have turned up, but I don't recollect of any formal papers being served upon me.

Q. I continue the reading:

Question 9th. What is the character of the mines owned and worked by said "Abra Company" at Tayoltita, which you have named, so far as regards their richness of metal and supply of the same?

Ans. It is good. They are undoubtedly among the best and most valuable of all the silver mines in Mexico, and some of them are not unknown to fame for their rich and abundant productions. I refer more particularly to "La Abra," "El Rosario," "La Talpa," and "El Cristo" veins. I should like to own them, and if it were possible to raise capital to work them, and to secure proper protection from the local authorities, which I think improbable, if not impossible, in Tayoltita, to secure any protection.

Please state how far the answer which I have read conforms to the statement made by you to General Adams at Mazatlan.—A. I can only say in reply to that that that is false in every particular. I could have owned them if I wanted to, and I had the means to work them. I had all

the protection that I wanted from the local authorities; and, as a proof of it, I worked those mines for five years, and they are being worked now, and that Durango Mining Company has been worked twenty-seven years, and they are now turning out $115,000 a month. I worked the Candalaria and the Bolanos in San Dimas. Some people repeatedly asked me to go over there and take hold of those mines, but I always declined.

Q. Why did you decline?—A. Because I sent over my right-hand man to look over the district, and if there was anything good to secure it.

Q. What report did he give you?

Mr. KENNEDY. I do not think that that is admissible at all.

The CHAIRMAN. No.

Mr. KENNEDY. That is pure hearsay.

The WITNESS. My rule always is to send out my right-hand man to look at a property first; and then, if he reports favorably on it, I go myself and look at it, and if it is good I take it.

Q. Did you ever go and examine the Tayoltita mines upon that report?—A. No, sir.

Q. Did you state to General Adams at that time that the mines now worked by La Abra Company are among the best and most valuable of all the silver mines of Mexico?—A. No, sir.

Q. Or anything of that purport?—A. No, sir. When we consider Zacatecas and Candalaria that would be the height of folly for me to make such a statement, for my book on Mexico, which is a recognized authority on the mines of Mexico, will bear me out in what I say, because all those notes were made at the time I was in Mexico.

Q. I continue the reading at question 10:

Question 10th. Did you, when at Tayoltita, observe the piles of silver ores on the patios of the company, so as to be able to state the quantity and value of the same? If so, state it.

Ans. I think not; I did, however, more than once, observe said ores. The company left great piles of them on the "patios," which they had taken out and packed down from their said mines, and the average of them were said to be very rich of silver metal, with a small percentage of gold; but I also observed there unmistakable evidences of that which had been a common report for a long time, that those piles of ore had been torn down and the richest of their metals culled out and carried away, leaving upon those extensive "patios" the poorest of them, which were scattered over a large surface, covering, I should say, at least a quarter of an acre of ground. It was said that the company abandoned about a thousand tons of those metals, but not half of them remained when I saw them in 1870; and those that were left gave evidences of having been torn down, culled out, and rejected. I can not state the value of those that I saw, but I think from a cursory examination

of them that even the poorest and rejected pieces would pay well to beneficiate.

How far does this answer conform to the statement made by you to General Adams at Mazatlan?—A. I told him that I had observed the piles of ore on the patio, spread over the whole patio. I also told him that I sent my assayer over there to sample it, and he did so, and brought the sample back to the hacienda.

By Mr. KENNEDY:

Q. What date was that that you sent him over?—A. When I was tearing down this machinery in December, 1871, I sampled them myself.

By Mr. FOSTER:

Q. About December, 1871?—A. About December, 1871.

Q. Go on with your statement.—A. That was a frequent occurrence, because we were some time in tearing it down, and I was over there frequently, and, being a mining man, I would naturally go over and take samples from the piles of ore, which I did, and sampled them thoroughly, and if they had been any account I would have worked them up.

Q. Did you make any statement to him at that time to the effect that the average of that ore was said to be very rich in silver metal, with a small percentage of gold?—A. No, sir.

Q. Did you make a statement to the effect that there were "unmistakable evidences of that which had been a common report for a long time, that those piles of ores had been torn down and the richest of their metals culled out and carried away?"—A. No, sir.

Q. You were stating that your man made selections from those ores on the patio?—A. Yes, sir.

Q. State the result of your assay.—A. My assay was $8 in silver and $5.50 in gold, making $13.50 per ton.

Q. Would you call that very rich in silver and gold?—A. It wouldn't pay for working.

Q. Did you say anything to him about the common report that the ores had been torn down and the richest carried away?—A. No, I don't recollect that I did; but you can depend upon one thing, that Mexicans would never leave any rich ores lying around, nor American miners either, any more than the Treasury Department here would leave silver dollars lying around.

Q. Did you say:

I can not state the value of those that I saw, but I think from a cursory examination of them that even the poorest and rejected pieces would pay well to beneficiate.

Did you make any such statement as that?—A. No, sir; I did not.

Q. What was the fact in regard to that, from your observation in 1871?—A. That our test was too low a grade to touch.

Q. You mean to work?—A. Yes, sir; to handle. When I say handle, that means taking them off the place and working them.

Q. State whether the ores that you saw in 1871 at the patio were of any value for practical purposes.—A. No, sir; $13.50 would hardly pay the freight over to San Dimas.

By the CHAIRMAN:

Q. You mean in Mexico?—A. Yes, sir.

Q. Would it pay in this country?—A. In this country we are working 70 tons a day that don't work over $15 to the ton. But to take that over to San Dimas, over 12 miles, that ore would hardly pay freight.

By Mr. LINES:

Q. What would have been the cost of reducing it at the patio there, provided the machinery was all in operation and without carrying it over to San Dimas?

The WITNESS. Leaving out the mining part?

Mr. LINES. Leaving out the mining.

A. I don't know what the expense would be.

By Mr. FOSTER:

Q. What would it have cost to reduce the ores on the patio there at Tayoltita?—A. They had rather poor chance there, on account of the likelihood of it being carried away by flood. But even under favorable circumstances, with the loss in quicksilver and one thing and another, I don't see that they could have reduced it for less than $8 a ton; and that would not include the shipping of the bullion to Mazatlan, nor include the mining or the packing down to the hacienda.

By Mr. LINES:

Q. Would there not have been, including all those expenses, an absolute loss on each ton of ore mined and reduced?—A. I worked a low grade of ore in Candalaria for a year for a test; I worked from 900 to 1,000 tons of ore, and I gave it a good test, bringing everything down to a business basis, and I lost a couple of thousand dollars a year on $18 and $19 rock. Then I abandoned it and went to other parts of the mine.

By Mr. FOSTER:

Q. I continue the reading.

Question 11th. What, in your judgment, was the value of the mines, machinery, stamp-mill and other improvements belonging to and worked by "La Abra" Company, which you have named? State your opinion of their value in March, 1868, and at the present time, and also the amount of money which that company must have expended in said works, in your opinion.

Ans. I should value those mines at not less than one million dollars, in 1868, and the company's improvements at half a million more.

Did you make any such statement as that, as far as I have read?—A. That I should value those mines at $1,000,000 in 1868? I was not there in 1868. I knew nothing about that in 1868, and I never made any such statement as that.

Q. What do you say to that which follows: "And the company's improvements at half a million more?" Do your remarks apply to that as well?—A. They might have spent $100,000 or $150,000, all told, in the whole business; that would be my judgment; they might have raised more money, but I don't think that in the whole business it would amount to more than that.

By the CHAIRMAN:

Q. Do you mean the machinery?—A. In the machinery, bringing it up, and everything.

By Mr. FOSTER:

Q. What do you mean by "everything;" all the operations of the company?—A. The operations of the mine I don't know anything about, but I mean all the buildings and everything. That mill may have cost $40,000 landed there; I couldn't state; if it did cost more than that it was an outrageous waste. But I say this, that I knew nothing about that in 1868, and I never made any such statement about things I do not know.

Q. The opinion which you now express is simply upon what you saw at the time and heard from others?

Mr. KENNEDY. I object to that.

A. No, sir; my knowledge of the business was from my confidential man, Dr. Storch, who was a mining man, and I sent him over to examine these ores.

Q. I am now speaking about the value of the mines and improvements.—A. Of course, if that was the character of the ore which came out of those mines, which it was, I certainly would not take hold of a mine that would not give more than $13 ore, and I declined to take hold of it.

Mr. WILSON. Please do not argue the case as we go along; let us have the testimony.

Mr. FOSTER. I am getting an answer to this question; I continue to read:

And if they could have been held and worked by their magnificent machinery and stamp mill, without interruption, or "prestamos," and with anything like an assurance or hope of protection, I would now value them at three or four times that amount.

Q. Did you make any such statement as that to Gen. A. W. Adams?—A. No, sir; I never knew that they had prestamos.

By the CHAIRMAN:

Q. What is a prestamos?—A. A forced loan.

By Mr. FOSTER:

Q. Did you make any reference to any interruptions which the company had?

Mr. KENNEDY. I want to call the attention of the chairman to the fact that this answer is hypothetical:

If they could have been held and worked by their magnificent machinery and stamp mill, etc.

There is no statement in this answer that the witness knew or did not know at the time he made it that there had been prestamos.

Mr. WILSON. He says he did not give any such answer.

Q. I continue the reading:

If the parts of the stamp mill could be found and put together again upon their grounds at Tayoltita, and all the machinery there in as good order as when the same was abandoned by the company, I should value the whole at four to five million dollars, not less than four million ($4,000,000).

What have you to say to that part of the answer as having been given by you at Mazatlan?—A. As a mining man I would not make such a statement.

Q. Did you make such an assertion?—A. No, sir; I never made such a statement before or since, and I do not believe that I would make such a statement to put the value of a mine at $4,000,000 when I had not seen it.

By Mr. WILSON:

Q. I would like to have you state whether you did or did not make that statement. I do not want any hypothetical answers or any equivocal answers to that question.—A. No; I never said that a mine was worth $4,000,000 when I did not know it.

Q. Did you ever make that statement?—A. No, sir; I never made any statement of that kind.

Mr. WILSON. That is what I want you to say.

Mr. FOSTER. Mr. Wilson, you will have abundant oppor-

tunity to cross-examine. That is what he has said two or three times already.

Mr. WILSON. I simply wanted an answer to the question.

Mr. FOSTER. Well, you have got it. Now, I continue the reading:

But I do not believe it possible ever to get that machinery together again, as the parts stolen and sold are so scattered over several mining districts in the State, and much of it partially worn out, or refitted to other machinery, so that it would, in my opinion, be better and cheaper to repurchase a new stamp mill and machinery and bring it there from the United States, than go to the uncertain expense of hunting up or replacing that which was taken away from them at Tayoltita.

A. If I said that then, I say it now.

By Mr. WILSON:

Q. Did you say it then?—A. I might have said it, and that is the truth, that it would be better to put up a new mill than to hunt up old pieces—for instance, a retort. We took two of the retorts that were broken and could not be used over again, and we couldn't do anything else than bring new ones from the United States. If I did say it, I say it now.

By Mr. FOSTER:

Q. The question now is whether you said:

I should value the ores taken out of said mines, and abandoned by that company, in 1868, at half a million dollars, judging from what I have seen there myself, and have heard stated by reliable miners in that district, and also by common report, or public opinion, which is seldom in error among practical miners in such cases.

What have you to say as to the correctness of that declaration?—A. It says here that "I should value the ores taken out of said mines and abandoned by that company in 1868 at half a million dollars." Did you make any such declarations as that at Mazatlan?—A. No, sir; not from what I have seen there myself; and then there is my own statement, made before this examination took place, of that assay (13.50) of the ores that were taken out.

Mr. WILSON. In order to avoid any future controversy about this matter, I would like to have the witness state whether he said that thing in that connection or not.

The WITNESS. As I told you, my answer to General Adams has been perverted, and there is only one thing to do, and that is to bring the original notes that I erased and corrected; bring those sheets of paper; they will show what I said at that time.

Mr. WILSON. I simply want to know whether you said that or not.

Mr. FOSTER. He has answered that he did not.

Mr. WILSON. He has answered it in an equivocal way.

The WITNESS. What I have said or did not say has been changed and perverted.

By Mr. WILSON:

Q. If you did not say that, then it has been changed?—A. Yes; it has been changed.

Q. Now, I want to know whether you did or did not say that?

The WITNESS. Did not say what? I have answered.

Q. Just what he read to you. You can conform your answer just to what Mr. Foster has read to you, and you have it right before you, reading it for yourself.—A. Yes, sir.

Q. I want to know whether or not you said this:

I should value the ores taken out of said mines, and abandoned by that company, in 1868, at half a million dollars, judging from what I have seen there myself, and have heard stated by reliable miners in that district, and also by common report.

A. The common report I have got nothing to say about.

Mr. WILSON. I want to know whether you said that?

Mr. FOSTER. Did you make any such declaration as that to General Adams at Mazatlan?

Mr. WILSON. I want to get at what he said.

Mr. FOSTER. I object to the interruption. If the answers are not satisfactory, you will have an opportunity to cross-examine hereafter.

The WITNESS. My answers have been perverted so that it is hard to say. It says here that I said, "I should value the ores at half a million dollars." I simply say to that that if I should value these mines at not less than $1,000,000, I put them in the same category, when it comes to judging of the value of mines in dollars and cents.

Mr. FOSTER. Did you make any such declaration as that?

Mr. WILSON. One moment. They say that this testimony has been perverted, and he is trying to create that impression here. Now, we have a right to know, when they are putting these categorical questions to him, whether he said that thing or not, and if he did not say that, then let him state what he did say. I do not want this witness to come here and give equivocal answers, about which we may argue hereafter before the committee. I want to know whether he said that or not. Then, if he says he did not say it, let him state what he did say, and we can cross-examine him upon that.

Mr. FOSTER. I am conducting this examination now

I have asked the witness a question, and I do protest against counsel on the other side interrupting either my questions or the answers of the witness in the manner in which Judge Wilson persists in doing. I say that if he does not understand the answers given by the witness he will of course have the privilege of interrupting and asking for a more distinct answer, but in the cross-examination hereafter the judge will have a full opportunity to ascertain all that he desires in regard to the knowledge of this witness.

Mr. WILSON. That is what I am doing.

Mr. FOSTER. The time has not come for your cross-examination, and we do not propose that the counsel shall begin now to intimidate and worry and annoy the witness.

The WITNESS. He does not annoy me a bit.

Mr. FOSTER. Or interpose at this time. If he chooses to do so when conducting his cross-examination, it is his privilege, but not now.

Mr. WILSON. I simply want to understand what the witness's answer is.

The CHAIRMAN. The regular practice in court would be that General Foster would ask his question in a form that suited himself, provided he asked legal questions, and the answers would be taken from the witness. Thereupon the other side would have the right to cross-examine upon those answers and upon any matter connected with them. But I do not believe that Judge Wilson has the right to take the witness out of Mr. Foster's hands and to shape the answer——

Mr. WILSON. No; I do not.

The CHAIRMAN. Unless the answer is going upon the record in some incorrect form.

Mr. WILSON. I only want to know what the answer is.

Mr. FOSTER. You may ask the stenographer to read it.

Mr. LINES. Suppose you could not understand it at all; would you object to it?

Mr. WILSON. Yes. If he put the question in such an unintelligible way that a man of ordinary understanding could not understand it, I would object to it.

The WITNESS. There is a question here and an answer; and all these answers as to whether a portion of the ores were worth a half a million dollars or whether the whole mine was worth $1,000,000 or whether it would have been worth $4,000,000—I put those three distinct lines of answer into one and say that I never gave any testimony as to the value of either a portion of those mines or as to the

value of the whole mine to General Adams, and I did not even give him my answer in that way.

The CHAIRMAN. That seems to cover it. He gave no testimony about it.

Mr. WILSON. That was what I was trying to get at. That is all right.

The CHAIRMAN. Pass on with the examination.

By Mr. FOSTER:

Q. I continue the reading:

The refuse ores which have been culled over and rejected, and which still remain upon the ground, are worth but little. They might beneficiate as high as a hundred thousand dollars, but I think not to exceed that amount.

Did you make any such declaration as that to General Adams?—A. I did state that the refuse ores were worth but little.

Q. Did you put such an estimate on their value as $100,000?—A. I put that in same category of the values of either a portion or the whole. But I stated that the refuse ores were worth but little.

Q. Did you make any such statement as that?—A. No, sir; but I said the refuse ores were worth but iittle.

Q. (Reading.)

I believe four-fifths of the ores of value have been stolen from the company's patios and sold in other places.

Did you make any such statement as that?—A. That is as false as it is possible to put it. I never said that.

Q. (Reading.)

This, too, I only know from common report, which I believe to be true, but from all the circumstances made known to me by Mexican miners at Tayoltita.

Did you make any such statement as that to General Adams as that "I believe it to be true?"—A. No; I did not.

Q. Now I come to question 12:

Question 12th. Do you know whether *Marcos Mora*, *Macario Olivera*, or other Mexican authorities of San Dimas, in 1866, 1867, and 1868, were enemies to "La Abra" Silver Mining Company, or whether any of said authorities encouraged Mexican miners to commit depredations upon said company or their property at Tayoltita, or whether said authorities, or any of them, incited disturbances or encouraged the expulsion of said company from their mines and from the country in the years named?

Ans. I do not know of my own knowledge, but I have heard that all those things were done there by the authorities named. I have heard it stated there that Macario Olivera, prefect in 1868, and Marcos Mora, whom he succeeded, were enemies of "La Abra" Company, and that they and some other authorities in the district

acted badly, and favored the expulsion of La Abra Company; but of this I have no personal knowledge.

Did you make any such statement as that to General Adams at Mazatlan?—A. No, sir; I did not. I did not know Marcos Mora or Macario Olivera, or about any of their disturbance, and I made no such answer to General Adams. I had heard of troubles with the local authorities, but I did not know who was in the right or who was in the wrong.

By Mr. WILSON:

Q. And you did not say anything about any report to General Adams either, did you?—A. Of the common report that there was trouble between Exall and the local authorities, due to his own indiscretion——

Q. I am not asking that.—A. You asked me what I heard.

Q. No; I did not ask you that.—A. I had no personal knowledge.

Mr. FOSTER. We object to Mr. Wilson interposing in this way.

Mr. WILSON. Go on.

By Mr. FOSTER:

Q. (Reading:)

Question 13th. How many foreign companies were there doing business in mining in San Dimas district in 1866 and 1867, and how many are now left in the district of San Dimas? Is there any at all except the Durango Company, which you represent as superintendent?

Ans. There were a large number of American mining companies in that district in the years named, but only the Durango Company now remains.

What do you say as to that?—A. I did not reply at all except that the Durango Mining Company was in existence and at work. I understood you wanted me to say whether I gave that testimony or not, and if I did not give it, what I did say. That is what I understand.

Mr. WILSON. No; he asks you in that connection for an answer, and I would like to have you say whether you did or did not say it.

The WITNESS. I say no, with the exception of the latter clause, which mentions the Durango Mining Company.

Q. (By Mr. FOSTER.) (Reading:)

Question 14th. How is it that your company can remain there without disturbances?

Ans. We have had disturbances and difficulties, but we have found it necessary to submit to all exactions, whether lawful or unlawful, which makes it to the interest of the authorities to keep us there; we have found out how to manage and *interest them*,

otherwise I suppose my company would be compelled to leave like the others, without a doubt.

Did you make any such answer as that to General Adams in your examination at Mazatlan?—A. No, sir; I did not. What I did say I suppose I can state now.

Mr. FOSTER. Yes; you can state as well as you can what you did say.

A. I stated that if I had been disposed to create a quarrel I could have had all the fight I wanted with the authorities, but that I was not there for that purpose.

Q. Did you make any statement to the effect that you found it necessary to submit to the exactions, whether lawful or unlawful?—A. No, sir; I submitted to no exactions and had none.

Q. (Reading:)

Question 15th. Do you know Matias Avalos, of said district?

Ans. Yes; I know him very well; he is, and has been for the last four years, in the employ of the Durango Company, of which I am superintendent; he is now with me in Mazatlan, as muleteer and mozo.

A. That is correct.

Q. As stated at Mazatlan?—A. Yes, sir; he accompanied me.

Q. (Reading:)

Question 16th. What is the character of the said Matias Avalos for truth and veracity in San Dimas, or where he is best known?

Ans. It is good. I look upon Matias Avalos as a strictly honest, truthful, and trustworthy man. I have frequently entrusted him with large amounts of silver coin, which he has always brought safely to the company from Mazatlan, and also with bullion from San Dimas to the mint at Durango, and Culiacan, and he never, as many others have done, reported a loss, which he might have done without detection or suspicion; but his reports are always candid and truthful. He is regarded as a strictly honest, conscientious, and reliable man.

How far does that conform to what you said at Mazatlan to General Adams?—A. That is perfectly correct, except that I added that on one occasion he had lost a $20 piece, which slipped out of his belt. I recollect that perfectly. I said: "General Adams, he never lost but one piece of money for me, and that was an ounce" ($16); and on examination of what they call in Spanish the "rattlesnake" (a belt that they wear around the waist), we found where it had worn through, and he offered to replace it, which I declined. But that answer is perfectly correct with that exception.

Q. (Reading:)

Question 17th. Have you heard anything about witnesses having been suborned by Mexican authorities of San Dimas, to testify for

the defense against their will, and in contravention of what said witnesses had previously testified to on the part of the claimant in this matter, by threats of inflicting a fine of one hundred (100) dollars and imprisonment if they did not come to court and testify against claimant? If you know of any such case, state the names of such authorities and of the witnesses so threatened and suborned; and, if you know, what was the result of the same?

Ans. I have heard of such threats being made by Judge Milan and by the said Judge Quiros, who succeeded him in office as chief magistrate of the district of San Dimas.

Did you make any such declaration as that to General Adams in answer to his question?—A. Yes, sir. I heard General Adams make that remark. I have heard statements of such threats being made, and Adams is the one that made them.

By Mr. LINES:

Q. From him you heard it?—A From him I heard it.

Mr. WILSON. Ask him whether or not he made that statement in that deposition.

Mr. FOSTER. He says yes.

The WITNESS. I heard it.

Mr. FOSTER. And he then proceeds to say——

By the CHAIRMAN:

Q. You answer that you did make that statement?—A. I did make that statement. I have heard of such threats being made.

By Mr. FOSTER:

Q. Then you state that they were made to you by General Adams?

Mr. WILSON. He states that he made the statement, and now he adds that the statements he heard were made by Adams.

The WITNESS. Yes, sir.

By Mr. FOSTER:

Q. (Reading.)

These threats were made against Matias Avalos and James Granger, both of whom, it was said, had previously testified on behalf of the claim of "La Abra" Company; and I heard Matias Avalos say that said district judge wrote down a statement for him to sign, on behalf of defendant, which was against his will and not true in point of fact; that said judge wanted Avalos to retract what he had sworn to in favor of said Abra Company in 1870, and Avalos complained that the judge did not finish reading the paper that he wished him to sign, as he (the judge) said there was "too much noise in the court room." I heard Avalos say that he believed said paper was sent to Washington, with his name and mark attached to it, as his testimony in favor of Mexico, to which he never consented, as he knew that a portion of that part which had been read to him was not true.

State whether that in whole or in part conforms to any statement made by you to Adams at Mazatlan.

Mr. WILSON. The question is, Did he make that statement?—A. No; I did not make that statement as it is there.

Mr. FOSTER. I am propounding the question.

The WITNESS. No; I did not make that statement as it is there.

Q. State in what respect it differs from the statement that you did make, according to your recollection.

The CHAIRMAN. Gentlemen, we will have to suspend here now, as I understand the Senate is in executive session, and I will have to go up to the Senate Chamber. If it will suit [illegible] will meet again at 10 o'clock to-morrow morning (Saturday), and we will try to sit it out.

Mr. KENNEDY. Before we adjourn I should like to request that the committee call on the Secretary of State to produce the original of this deposition.

The CHAIRMAN. I have already done that.

Thereupon the subcommittee adjourned to meet at 10 o'clock to-morrow, February 2, 1889.

SENATE OF THE UNITED STATES,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D. C., February 2, 1889.

The committee met pursuant to call.

Present: Senator Morgan (chairman), Hon. John W. Foster, and Mr. Robert B. Lines, of counsel for the Mexican Government, and Crammond Kennedy, of counsel for La Abra Silver Mining Company.

TESTIMONY OF CHARLES B. DAHLGREN—Continued.

By Mr. FOSTER:

Q. Page 405, I continue to read from the deposition of Charles B. Dahlgren, on behalf of claimant, as cited in the examination of yesterday.

Mr. KENNEDY. What answer is that, Mr. Foster?

Mr. FOSTER. It is question 17. I continue to read from the answer:

These threats were made against Matias Avalos and James Granger, both of whom, it was said, had previously testified on behalf of the claim of "La Abra" Company; and I heard Matias Avalos say that said district judge wrote down a statement for him to sign on behalf of defendant, which was against his will and not true in point of

fact; that said judge wanted Avalos to retract what he had sworn to in favor of said Abra Company in 1870, and Avalos complained that the judge did not finish reading the paper that he wished him to sign, as he, the judge, said there was "too much noise in the court room." I heard Avalos say that he believed said paper was sent to Washington, with his name and mark attached to it, as his testimony in favor of Mexico, to which he never consented, as he knew that a portion of that part which had been read to him was not true.

I ask you, Captain Dahlgren, to state how far this answer, as I have read it, conforms to the statement made by you to General Adams at Mazatlan?—A. Will the preceding paragraph be a part of it?

Q. Well, you have already testified to that part; you can include it if you choose.—A. It reads: "Answer. I have heard of such threats being made by Judge Milan." My reply to that was, and which includes the first part of the next sentence, I have heard of such threats being made from A. W. Adams as against his witnesses, but not mentioning any names.

Q. What have you to say in regard to this statement which I have read?—A. That takes the first part of it. The second comes to Avalos. Avalos, who was my confidential *mozo* or servant, told me that he had been drawn into this thing, or words to that effect, and had made a deposition, and asked me if any trouble would come of it. I asked him if he had told the truth. He said "Yes." I said: "Then no trouble will come of it."

Q. Did you say anything to Adams to this effect:

I heard Martin Avalos say that said district judge wrote down a statement for him to sign, on behalf of the defendant, which was against his will, and not true in point of fact?

A. No, sir.

Q. You made no such statement?—A. No, sir.

Q. Did you make any statement of this character:

That said judge wanted Avalos to retract what he had sworn to in favor of said Abra Company in 1870, and Avalos complained that the judge did not finish reading the paper that he wished him to sign, as he, the judge, said there was "too much noise in the court room?"

A. I never heard any such statement and never made any such statement.

Q. To Adams?—A. To Adams. I never heard anything about "noise in the court-room."

Q. (Reading:)

I heard Avalos say that he believed said paper was sent to Washington, with his name and mark attached to it, as his testimony in favor of Mexico, to which he never consented, as he knew that a portion of that part which had been read to him was not true.

Did you make any such statement as that to Adams?—A. No, sir.

Q. Did you ever hear Avalos make any such statement?—A. I answered that sometime ago by saying that he told me that he had made a statement and wanted to know if any trouble would come of it. I did not know which side he was for.

Q. Well, that statement that you then made covers—— —A. Covers all this thing.

Q. All that Avalos said to you at any time?—A. Yes.

Q. I continue to read from the answer:

I have heard of other and similar cases in this matter, but I have no personal knowledge of the facts. I believe the statement of Matias Avalos, however, to be true, for reasons stated in my answer to one of the foregoing questions (No.—).

A. "I have heard of other and similar cases in this matter, but I have no personal knowledge of the facts."

Q. Well, you have heard of them from whom?—A. Of course I heard of the case, talked *pro* and *con* in my hacienda. We would sit there of an evening and talk of it.

Q. Well, this relates to threats of the Mexican authorities?—A. Oh, the whole business from beginning to end; but it was not my business; I paid no attention to it.

Q. I continue to read from the answer:

I heard the said Granger say that if he had not complied with the demand of the judge of first instance of San Dimas in testifying against "La Abra Company," the claimant, that he knew he would have been compelled to give up his mining interests in that district and leave the country; which he said he could not afford to do, and therefore he was compelled to sign the testimony.

Q. Do you remember making any such declaration as that to Adams at Mazatlan?—A. No, sir; I never heard of it.

Q. Did you make any such statement as that to Adams at Mazatlan?—A. No, sir.

Q. You state that you never heard of any such?—A. I heard Granger tell all about it, but he never said he would be driven off out of the country; just the reverse.

Q. (Reading:)

Question 18th. Have you any interest, direct, contingent, or otherwise, in the claim of said "La Abra Silver Mining Company," to support which your testimony is here given, or are you agent or attorney for said company, or for any person having such interest?

Ans. No, none whatever; nor am I agent nor attorney for claimant, nor for any other party in interest.

A. That is right.

Q. That is correct?—A. That is correct; it is absolutely correct.

Q. (Reading:)

Question 19th. Was your authority to take from Tayoltita the said stamp mill, machinery, and other property of claimant, and to make use of the same in other parts of the State, given verbally, or only in writing; and was said property turned over to you with a view to your protecting the same as consul of the United States, for the benefit of claimant, or was said authority given to you only as superintendent of the Durango Mining Company, with the privilege of paying the appraised value, and of owning the same, or to pay for its use to said authorities, or to Mexico, as a business transaction between said authorities and your company?

Ans. The latter is the fact. It was a purely business transaction between Judge Quiros, representing the Republic of Mexico, and myself, as superintendent, representing the Durango Mining Company. There was nothing said by Judge Quiros, to my recollection, about protecting said machinery, stamp mill and other movable property of claimant. The transaction was not with me as consul; but, as I have stated, the property was leased for use to the Durango Mining Company, and for a valuable consideration, with the privilege of paying for the same at an appraised value by disinterested parties.

You will please state how far this answer conforms to the answer, if any, given by you to Adams at Mazatlan.—A. My answer to that is——

Q. Or was?—A. Was the correspondence between Judge Quiros and myself.

Q. Which has been read and testified to as correct?—A. Yes; that covers the whole question.

Mr. KENNEDY. Let me ask the witness if he put that correspondence in as part of that testimony?

Mr. FOSTER. Well, you can ask of me.

Mr. KENNEDY. It is just to save time.

Mr. FOSTER. I know, but you had better direct your question to me.

Mr. KENNEDY. I was directing my question to the chairman. If you have any objection, I will withdraw it. You can go on, Mr. Foster.

The CHAIRMAN. I thought your question was addressed to the witness.

Mr. KENNEDY. No; it was put through you, of course.

Mr. FOSTER. The letter was put in—introduced before the commission on the part of Mexico.

Q. The last part of that question is—I direct your attention to it—

Was your authority to take from Tayoltita the said stamp mill, etc.—

You state that, going to the latter part of the question—

or to pay for its use to said authorities?

Now I will go back—

And of owning the same, or to pay for its use to the said authori-

ties, or to Mexico, as a business transaction between said authorities and your company?

And the answer is that—

The latter is the fact.

Did you state to General Adams, in substance, that you are to pay the Mexican authorities for that machinery and other articles that you took of La Abra Company?—A. No, sir; I have stated most distinctly as a business matter in money matters I try to make no mistake; that I had asked permission to take it; that it had been refused to me by Judge Quiros, and that then I took it on my own responsibility as superintendent of that company, and announced my intention of paying whoever came forward to claim it as the proper owner.

Q. I continue the answer—

This authority was given to me by Judge Quiros verbally, as well as in writing, and I have acted upon it in good faith, believing then, as I still feel justified in believing, that he must have had authority from the Supreme Government to act in the premises, or otherwise it is reasonable to suppose that he never would have taken such a step in the matter as that of selling or leasing out this property, under the circumstances, to be worn out by use.

Did you make any statement of that character to General Adams at Mazatlan?—A. No, sir.

Q. Here follows——

By the CHAIRMAN:

Q. Do you mean, Captain, that you did not make any statement to him on that subject?—A. I did not make that statement to A. W. Adams.

Q. The statement as he put it in the deposition was not the statement you made to him?—A. I did not make that statement to A. W. Adams.

Mr. KENNEDY. Of course, Mr. Chairman, we do not admit that Adams made any statement.

The CHAIRMAN. I know, but I put it on the basis that somebody did.

By Mr. FOSTER:

Q. I find the following added in brackets in the deposition as printed on page 406:

["Interlined in the original:" Page 2, lines 16 to 17, the words "a son:" page 2, lines 29 to 30, the word "an;" page 6, lines 17 to 18, the word "the:" page 7, lines 5 to 6, the words "the stamp:" page 7, lines 27 to 28, the word "said:" page 9, lines 32 to 33, the word "them:" page 11, lines 22 to 23, the word "be."

[Erased: Page 1, third line from bottom, "bef:" page 4, line 42, "Buena Vista;" page 15, line 12, the word "said."

["The above corrections were noted before signing, with the consent of deponent and in the presence of the subscribing witnesses."]

The WITNESS. Who are the witnesses?

Mr. FOSTER. That will appear in a moment.

Q. Now, Captain, you have already stated that when you gave your statement or deposition at Mazatlan, which was written down, you gave your answers to questions propounded by General Adams which were written down by his clerk; after that was concluded you demanded to see the matter that had been written, and thereupon you made numerous changes and interlineations in that writing or paper?—A. I did.

Q. Will you state whether the changes and interlineations which have just been read embrace all the changes or interlineations that were made by or in your presence at that time?—A. No, sir; nor the twentieth part of them. Line after line I cut out—drew my pen through. I not only drew it through that way but I drew it across the entire page right that way [indicating], with a big dash. I said, "I did not authorize you, sir, to make such a memoranda as that." And I further said to him, "This appears to me something similar to the investigation in San Dimas," where I had to protect Granger against him.

APPENDIX D.

EXTRACT FROM THE DEPOSITION OF ISAAC SISSON, TAKEN BY SENATE FOREIGN RELATIONS COMMITTEE. (Sen. Rep. No. 2705, Fiftieth Cong., 2d Sess., pp. 788, etc.)

Q. How does it happen that you do not know what those rough notes [of Dahlgren's deposition] contained if this examination was conducted before you as consul or presiding magistrate on that occasion?—A. The examination was not conducted before me. I had no more—that was not my business. My business was there after they got through and the deposition was ready; then it was my business to look over it, but not to help them to fix it up.

Q. That is your idea of your business?—A. That is as I understood it.

Q. Yes, as you understood it. Now, then, was Dahlgren sworn before he was examined?—A. Sworn before the affidavit was read to him?

Q. Was he sworn before he was examined before Peña and Adams there?—A. Yes, sir.

Q. Before these rough notes were made was he sworn?—A. No, sir.

Q. Then he was not sworn before he was examined; he was sworn after he was examined and not before?—A. Before he was examined by them.

Q. What do you mean by "examined by them;" did they examine him, or did you?—A. They got together and got this by themselves. They got together and made up this deposition.

Q. Which one are you speaking of now?—A. The rough one. Then it was taken from that, and then when they got through, and got it all right to satisfy themselves, Mr. Peña copied it as it should be copied to make a decent, respectable deposition of it.

Q. How do you know he copied it?—A. I saw him.

Q. How do you know he copied it correctly?—A. I do not know as he did.

Q. Did you ever read these rough notes over?—A. No, sir.

Q. You do not know, then, whether he correctly copied it or not?—A. No, sir.

Q. Well, your interference in the matter, or your official action in the matter, rather, began after the deposition had been put in shape, copied out by Peña, read by Peña to Dahlgren, and Dahlgren subscribed it?—A. Yes.

Q. That was the first knowledge that you had of the real contents of that deposition?—A. Yes.

Q. Now, did you have any knowledge of what the real contents were except from hearing read so much as you did hear read of this copy that was made out by Peña for Dahlgren's signature?—A. I heard that.

Q. That was all the knowledge you had of what the man had sworn to?—A. That was what my knowledge was, from hearing that deposition, the one that is filed in the Department.

Q. That is the only knowledge you had of his examination on that occasion?—A. Yes.

Q. Was anybody there to cross-examine him in any way?—A. No.

Q. Mexico had no representative there?—A. No, sir.

Q. Who was this general you spoke of, or governor?—A. Governor Galan.

Q. Yes.—A. He was a lawyer.

Q. Who?—A. A Mexican educated in the United States, but a lawyer and an editor.

Q. Well, was he representing anybody on that occasion?—A. No.

Q. He was not?—A. No.

Q. Why do you call him Governor Galan; was he governor of Mazatlan?—A. He was governor of Lower California at one time.

Q. At that time was he governor of anything?—A. No; not governor of anything.

Q. But he had been governor?—A. He had been governor.

Q. He had no connection with this business except as a mere bystander?—A. I do not know as he had. I do not know whether Adams or Dahlgren—he used to do business for them—I do not know whether he had anything to do with them or not, but he was there and he was a lawyer and could speak English.

Q. What I want to get at is whether the Government of Mexico was represented at all on that occasion?—A. No, sir; I do not think it was.

Q. So this deposition was made up by Mr. Adams, Mr. Peña, and Mr. Dahlgren?—A. Yes, sir.

Q. And read in your hearing, and that is all you know?—A. That is all I know about it.

Q. Then this witness was never examined and sworn before you as a consul; he was sworn after his examination had been completed, made up, and written out by Peña, and read over to him, and not before?—A. No; he was not sworn before the affidavit—as I say before—this affidavit here in the Department, when he commenced to read that, then he was sworn.

Q. So you, in certifying to that deposition, did not certify to any examination that was made before you, but you certified to an agreed statement made up between Dahlgren, Adams, and Peña?—A. I certified to Dahlgren's statement, not Adams's and Peña's statement; it was Dahlgren's.

Q. I said an agreed statement made up between them?—A. No, no, no. Now, hold on. It was no agreed statement at all; it was Dahlgren's statement.

Q. Well, how do you know it was Dahlgren's statement unless you had heard Dahlgren make the statement, and knew that Peña had correctly copied it?—A. Well, I tell you, he swore to it there.

Q. Oh, that is very clear; he made an affidavit to it?—A. An affidavit to it, but I can not tell whether the affidavit was true or not, or whether what he stated was true.

Q. And you did not at that time know anything of what Dahlgren had stated to Adams and Peña before that oath was administered by you except as you heard it read over—that paper?—A. No; I do not know anything of what they had done before. As I stated before, it was not my business to get up depositions, but it was my business to swear people to tell the truth after they did get them up; that was all.

Q. Well, we happen to differ about your duties.—A. Well, that is all right.

Q. You think you had no duty to examine the witness and to state any facts that he might trip in the course of his examination in order to impeach his testimony?—A. I had no direction from the Department to do any such thing.

Q. You think you had no duty there at all as an examining counsel to see that the witness, in giving his testimony, did justice to the Government of Mexico?—A. No. It was my duty to see that the thing was done as correct as I could, I suppose, but I was no attorney on the part of Mexico.

Q. No, you were not an attorney, and that is the reason you were directed to take down the examination; that is, you were an impartial man?—A. That is it exactly.

Q. But instead of taking down an examination of a

witness whom you had already sworn to tell the truth, the whole truth, and nothing but the truth, you certified to an examination that other men signed and brought to you for a certificate?—A. No, I did not do any such thing.

Q. Well, how was it if it was not that way?—A. I certify to what he positively swears to.

Q. Now, you read that?—A. I have read it.

Q. Now, is that true or is it not?—A. That is what I certify to and he swore to it, whether the statement that is in that paper is true or whether it is not true. I certainly had no right to examine him, as a lawyer, in regard to what he knew about the affairs between Mexico and the United States or that La Abra claim.

Q. Certainly, not as a lawyer.—A. My duty as consul there—because I had no such instructions to do it.

Q. Well, what your instructions were, I don't know. I think you will find——A. They are easily found in the Department.

Q. Your instructions are to take examinations of witnesses under oath just as a notary public would, and not merely swear a man to an *ex parte* affidavit without your knowing anything about the contents of it. Suppose——A. If a man comes——

Q. No; wait a moment. Suppose on that occasion you had examined Mr. Dahlgren yourself, as consul, as a judge, and you had become satisfied he was swearing to a falsehood, would you have certified to that fact?—A. No.

Q. You would not?—A. Not if I thought he was swearing false I would not.

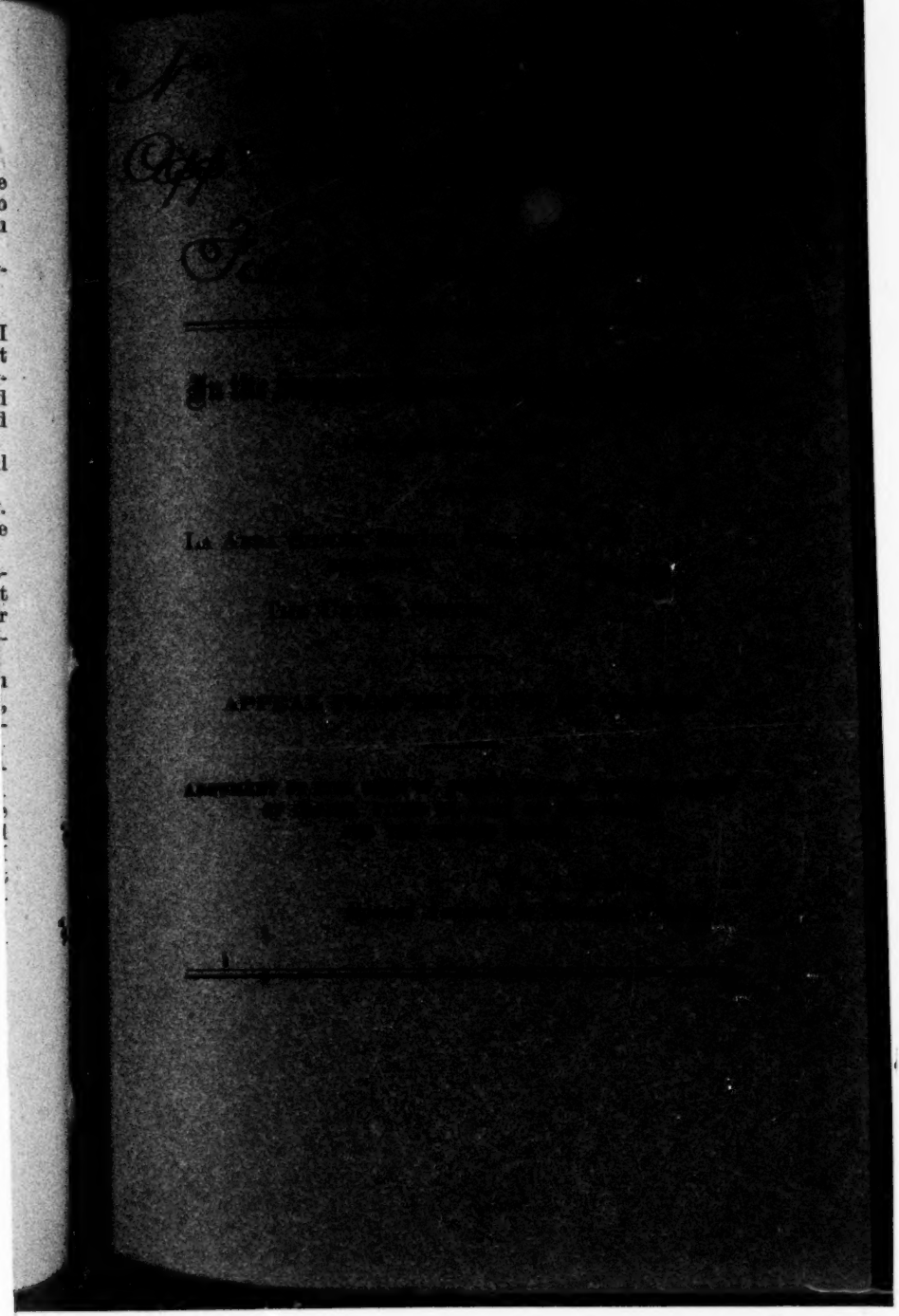
Q. Would not certify to the fact that you believed he was swearing falsely?—A. Yes; to the fact that I believed he was swearing falsely; but I thought you meant if I would certify that it was a truthful one; but if I thought the affidavit was not true I certainly should not have certified it.

Q. Well, what opportunities did you have for determining whether he was swearing to the truth or not?—A. No opportunity of determining only what he said.

Q. Well, but you had no opportunity of telling what he said except what was written down in that paper?—A. Yes.

Q. So that in fact he was not examined before you?—A. Not as a witness; no.

The CHAIRMAN. That is all. Now you can go on, Mr. Kennedy.



In the Court of Claims of the United States.

THE UNITED STATES *v.* LA ABRA SILVER MINING COMPANY and others.	In equity. No. 17917.

ON FINAL HEARING.

ORAL ARGUMENT FOR THE UNITED STATES.

THE QUESTION OF FRAUD.

Happily for all parties concerned, we are now approaching the last stage in the long and tedious history of La Abra claim. The question to be considered and determined by this court had its origin twenty years ago in a diplomatic note from the Mexican minister in this city (November 28, 1876) to the Secretary of State, bringing to his attention the allegation of the Mexican agent before the commission that this claim was "fraudulent and based on affidavits of perjured witnesses." In

response to a note from the Secretary of State respecting this allegation, the Mexican minister protested that it was not his "intention nor that of the Mexican agent to open any question whatever nor to put in doubt the final and conclusive character" of the award, but that his action was only "with a view that the sentiments of equity of the Government of the United States, once convinced that frauds have actually been committed, will then prevent the definite triumph of those frauds." This action of the minister being reported to the Mexican secretary for foreign affairs, met with his approval, and he stated that "if the appeal to the sentiments of justice and equity of the United States Government * * * should for any cause whatever be ineffective, the Mexican Government will conscientiously fulfil the obligations imposed on it by that international compact" (the claims treaty). (H. Ex. Doc. 103, Forty-eighth Congress, first session, 147–150.)

The determination of this simple question of fraud has been delayed by the interposition on the part of the claimants of every imaginable defense and objection which their numerous and skillful counsel have been able to devise. The questions of *res adjudicata*, of vested rights in an international award, of the right of the Executive to withhold moneys paid under such an award, of the power of Congress to reopen an adjudicated claim, of the justice of allowing Mexico to take advantage of its alleged *laches*, of the constitutionality of the act of Congress by virtue of which the pending suit was brought, and of the jurisdiction of this court—all of these and others have been presented to the successive Secretaries of States,

Presidents, Congresses, and the Supreme Court, without any other result to the claimants but postponement of the hearing and determination of the only real question in the case, to wit, whether the award was obtained by fraud and perjury. Even in this court it has been seriously and strenuously maintained that the question of fraud is not justiciable.

At the end of twenty years, beaten on every question advanced to evade a determination of the real issue, the claimants have been driven by the combined action of the executive, judicial, and legislative departments of the Government of the United States to appear in this judicial forum, which, under the act of December 28, 1892, has been empowered—

> To determine whether the award made by the United States and Mexican mixed commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein, or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns.

The power and duty of the court in respect to the present suit are so clearly and specifically set forth in the act from which the foregoing quotation has been made that I do not deem it necessary to dwell upon it.

THE AVERMENTS OF THE MEMORIAL.

The memorial, which is the basis of the claim upon which the award of the commission for $683,041.32 was rendered, appears in full in the bill of complaint (p. 5).

Its essential averments were: (1) That La Abra Silver Mining Company was organized in 1865 under the laws of New York for the purpose of carrying on the business of mining in Mexico, had its principal office in New York City, and the amount of its stock was $300,000; (2) that it purchased various mines, named in the memorial, in the Republic of Mexico; (3) that said mines were of such extraordinary and historical richness that they were especially mentioned by Humboldt and Ward; (4) that the company proceeded to the working of the mines, and to that end sent intelligent agents to Mexico, employed large numbers of miners, laborers, etc., and (5) purchased great numbers of mules, quantities of provisions, improved machinery, etc.; (6) that they expended in the purchase and working of the mines $300,000; (7) that they were getting out a large amount of the richest ore and were in the act of realizing a profit of $1,000,000 per annum (8) when they were compelled to abandon this property and over 1,000 tons of ore by reason of the unfriendly and illegal acts of the Mexican officials; (9) that an intense prejudice existed against all Americans, and especially against La Abra Company; (10) that the company's superintendent was arrested without cause, fined, and imprisoned without trial and without being informed of any offense; (11) that when the superintendent applied to the authorities for protection his request was refused; (12) that acts of violence were committed against the property and employees of the company, which were encouraged by the authorities; (13) that the employees became so alarmed that it was impossible to keep

them at work; (14) that the authorities repeatedly seized mule trains of the company loaded with provisions and appropriated them to their use; (15) that large quantities of ores were taken from the company, the employees being deterred by threats from resisting; (16) that things finally got to such a pass that one of the personnel of the company, in charge of one of its trains, was openly killed by the Liberal forces and the train seized; (17) that this murder was made a matter of boast by Mexican officials, and the authorities of San Dimas openly avowed their purpose to drive out all the American mining companies and get their property; (18) that one motive of this persecution was to compel the company to leave, and thus permit the Mexicans to obtain possession of their valuable property; (19) that from the said persecutions, outrages, and insecurity, it became impossible for the company to work the mines, and the same were abandoned, as aforesaid; (20) that the enforced abandonment of the mines utterly ruined the company, who sustained damages to the amount of $3,000,030; (21) that though the mines were of immense richness, it was impossible to extract ores except by heavy expenditures, which were made, but the buildings and other structures, owing to the abandonment, were of no present value; (22) that the mines with the buildings were of the value of $1,000,000; (23) that at the time of the abandonment 1,000 tons of extracted silver ore, worth $500,000, were left by the company; (24) that upon the abandonment of the mines by the company these ores were carried off by the Mexicans and lost to the company; (25) that at the time of

the abandonment the company were extracting large quantities of ore, and their profits would have been very great if they had been permitted to work the mines; (26) that the company estimate their clear annual profits which they would have obtained from the mines at $1,000,000; (27) that the company have expended $30,000 in conducting their business otherwise than in the expenditures at the mines; (28) that the claimant is a corporation of the United States; its stockholders citizens of the United States; was such corporation when this claim arose; the claim belongs wholly to the claimant, who has never received any indemnity therefor, and that it was never presented to either Government prior to February 1, 1869.

The memorial is signed "La Abra Silver Mining Company, by their attorney in fact, Robert Rose," and attested by the oath of Robert Rose, under date of June 14, 1870. But on March 17, 1870, Rose and Staunton, as attorneys for La Abra Company, had filed with the Secretary of State a notice of a claim against Mexico for the sum of $1,930,000, and asked that the claim and proofs, thereafter to be produced, might be referred to the commission between the United States and Mexico for settlement. (Bill of complaint, p. 5.)

The memorial, as I have dissected it, consists of 28 averments. I propose to establish to the satisfaction of your honors that not more than two of these averments are true in fact, that the other 26 are false in whole or in part, and that every averment which is essential to establish the claim is absolutely false.

The evidence upon which this claim was heard and determined by the commission and umpire is very conflicting, but out of this conflicting and perjured mass of testimony some undoubted facts can be found, and these facts in connection with the new evidence not before the commission submitted at this hearing, and especially the letter book of the company and the original letters of its officers and agents, reveal to us the true history of the company and furnish us with all its operations in detail from its organization to its final collapse. It is an interesting history, but by no means an unusual one up to its collapse. It is the common experience of tens of thousands of mining companies organized in the United States with high hopes, which after a series of bitter disappointments ended in complete failure and abandonment. Any traveler in the mining districts of the United States and Mexico will remember the lone chimneys, the abandoned buildings, the rusting and dilapidated machinery dotted here and there over the face of the mountains, standing as gravestones to mark the failure and death of great expectations. The unusual and extraordinary feature in the history of La Abra Company begins with the inception of the idea suggested by the creation of the mixed claims commission of making Mexico responsible for its own incapacity and folly.

INHERENT IMPROBABILITY OF THE CLAIM.

The mere reading of the memorial at once suggests the inherent impossibility or grossly improbable character of the events therein alleged. Is it not incomprehensible

that a body of Wall street capitalists, possessing unusually rich mines which were in the act of yielding a profit of one million of dollars per annum, would tamely submit to the oppression and persecution of a foreign Government without a protest, and be willing to take the chances of litigation before a claims commission? Is it not contrary to human experience to believe they would allow this valuable property to remain abandoned, without a single effort to regain it through their own Government or in some other way? When your honors come to examine this memorial, and possess yourselves of the plain and undisputed facts in the history of this case, you will apply to it the ordinary tests of credibility which are ever present in the judicial mind, and will not allow the improbable and impossible to be established by the class of evidence with which the claimants sought to maintain their memorial before the commission. I have thought well at the outset to bring this view of the case to the attention of the court, but as it is somewhat elaborated in the brief for the Government, I may be excused from further discussion of it for the present.

THE HISTORY OF LA ABRA COMPANY.

I shall not tax your honors' patience with a review of the great mass of evidence which constitutes the history of this claim, but shall as briefly as possible attempt to notice all that is important and essential to a full understanding of the facts of the case. And in the first place I desire to make a hasty review of the facts attending the creation of this company and the purchase of the

mines in Mexico. The story of these events is told at some length by Mr. David J. Garth, and alluded to by other witnesses. Mr. Garth's testimony on this point will be found in respondent's evidence, pages 70 to 73. 719 - 722
It there appears that in the year 1865 one Mr. Hardy turned up in New York, bringing a letter of introduction to Mr. Garth from a relative of the latter. Hardy claimed to own what was known as La Abra mine in Mexico. Witnesses testified before the commission that Hardy had a short time before denounced (acquired a working title to) La Abra mine, which had been abandoned for many years. (~~Ex. A, p. 446–7.~~) Hardy pp 140–141
brought with him specimens of ore, and through the exhibition of these and his representations, he induced Mr. Garth and one Thomas J. Bartholow to go with him to Mexico for the purpose of examining La Abra mine, with a view to its purchase by them and others whom they represented, living in New York and the West. Bartholow, in his deposition before the commission (~~Ex. A, 472),~~ swears that he and Garth were induced to make p 166
their visit to Mexico by a General Smith, who was the agent of Castillo del Valle and Manjarrez, the owners, not of La Abra mine, but of others in the same locality. But this statement was not true, as appears from the testimony of both Garth and Smith. (~~Ex. A, 348.~~) Smith p 42
was in New York in 1863, but had returned to Mexico without success in his effort to sell the Del Valle and Manjarrez mines. When Garth and Bartholow were ready for their journey, another person appeared on the

scene, whose relation to the affairs is best told by Garth in his cross-examination by Mr. Maury (~~Resp. Ev., 71~~): p. 720

Q. Did he (Hardy) go along with you?
A. Yes, sir.
Q. Who else went with you?
A. A man by the name of Griffith.
Q. Who was he?
A. He was a stranger to me who was mining in California and knew all about gold and silver, so he said. He was in the mining business for many years.
Q. Was he trying to sell?
A. No, sir; he went along as a sort of expert, I suppose.
Q. You say "as a sort of expert, I suppose?"
A. Yes, sir.
Q. Was he a friend of Hardy's?
A. I do not know that I had ever seen Mr. Hardy before we met him in New York.
Q. Was Griffith employed as an expert?
A. No, sir; he went with us.
Q. How did he happen to go?
A. I suppose he wanted to go. He took stock in the company to the amount of $5,000 or $6,000, I suppose.
Q. After the company was formed?
A. Yes, sir.
Q. The company was not then formed, was it?
A. No, sir.

And who were Garth and Bartholow, selected by their New York and Western friends to accompany a couple of old California miners to an unknown country to inspect a mine? Garth tells us (~~Resp. Ev., 70~~) that he was then p. 719

and had been for many years engaged in the tobacco business. As to Bartholow, he says:

Q. General Bartholow at the time he accompanied you to Mexico, what was his business?

A. I don't know precisely. I think he was probably in the banking business, or something, in St. Louis.

Q. He was not a mining engineer?

A. No, sir; he was not a mining engineer.

Q. Had he any knowledge of mining at all?

A. Not that I know of.

Q. Had you?

A. None, except what I read. I had no practical knowledge.

Q. By whom were you sent down there?

A. A number of gentlemen, who wished us to go down there with Mr. Hardy. He came to New York with his specimens.

Q. From where?

A. From Mexico.

HOW THE MINES WERE PURCHASED.

So the tobacconist and the man from St. Louis, whose occupation does not seem to be very definitely known to his associate, started off on their long journey, escorted by the mine owner and the California expert, who turned up so unexpectedly and went along just because "he wanted to go." The journey in those days (1865) was made by steamer from New York to the Isthmus of Panama, thence by steamer on the Pacific side to San Francisco, and from there by a small steamer back down the coast of Mazatlan, the steamer from Panama not

touching at Mazatlan. (~~Comp. Ev., p. 46.~~) From this port the journey to Tayoltita, where La Abra mine was situated, was a distance of about 160 miles into the heart of the Sierra Madre range of mountains and had to be made on mules. As to this journey and the state of the country at the time, Garth testifies ~~(p. 72)~~:

> Q. How did you find the country—what was the condition of the country? Was it in a state of peace or war?
>
> A. I suppose the country was in a state of war at that time, but we saw nothing of it of any consequence—not in that part of the country. I do not think there were any troops there. I do not think that I saw any troops of the Government.
>
> Q. You did not see any exhibition of any violence?
>
> A. We went from Mazatlan to Tayoltita on mules with guides. We were not disturbed by any war.
>
> Q. Was there any war going on there?
>
> A. I understood there was a contest between Maximilian and the Juarez Government, or whoever was there—I don't know now. But in that part of the country you saw very little of it. I do not remember whether General Juarez was President or not. It was the Mexican authorities against Maximilian—I think about the end of the invasion, you would call it, of Maximilian.

The history of that war is familiar to all Americans, because of its intimate connection with our own civil contest. It began in 1861, and when Garth and his companions arrived at Tayoltita it had been in progress for four years. At that time Juarez, the legitimate President, had been driven by the Imperial forces up to the

extreme northern limits of the country at El Paso, and the Imperialists were in control of the greater part of its territory, including the States of Sinaloa and Durango, visited by Garth; and this explains why he and his companions saw little or nothing of the contest during that visit. But the fortunes of war soon began to change, and during the greater part of the time La Abra Company maintained its operations in the country the two States named were the theater of military operations and guerrilla warfare.

When Garth and Bartholow reached Tayoltita they were made the guests of Castillo del Valle, the owner, not of La Abra, but of a number of other mines in that district. How he discharged his mission in part is told by himself (Resp. Ev., 72): ~~72~~ 721

> Q. (On cross-examination.) What did you do during the three weeks you were there?
>
> A. We explored these mountains and mines and went down into them.
>
> Q. Did you know anything more when you got down into them than you did before?
>
> A. Not much. Griffith was there and he claimed to know good ore; and Weidner was there and he claimed to know.
>
> Q. Whom did he represent—Del Valle?
>
> A. I don't know whether he did or not. He was in that neighborhood.
>
> Q. There were plenty of people there to show you rich ores, were there not?
>
> A. Plenty of them.
>
> Q. So that it seemed to be a very rich country in silver, from the specimens?
>
> A. I think so.

Before the Senate committee, Garth testified that Weidner was a German metallurgist and mining engineer, who had been employed by Hardy to make a survey of La Abra mine, and he exhibited to Garth the report, drawing, etc., prepared by Weidner, showing how it was to be developed; and Weidner also made assays. On the basis of this report and survey, Hardy represented to Garth that La Abra mine was very valuable. (Senate Report 2705, Fiftieth Congress, second session, p. 118.) We are not further informed by Garth as to the character of Weidner's report, but we do know from other sources what was the condition of this mine at that time. Ward, in his work on Mexico, published in 1828, and quoted in the deposition of Smith, one of the claimants' witnesses before the commission, states that Zambrano, a Spanish miner, early in this century worked La Abra, but it filled with water and was abandoned; that after his death his nephew extracted the pillars from the mine and went to Spain; and this is confirmed by Garth's statement that he was told during his visit that the pillars had been cut out and the débris had fallen to the bottom. (Senate Report, p. 123.) And Manjarres, Del Valle's partner, and other witnesses, testified before the commission that it had been abandoned for many years before Hardy denounced it. (~~Ex. A, 116, 117, 451~~. pp. 140, 141, 145) We will see later that this mine proved of no value to the new company, and little or no work was done in it.

After this inspection, the character of which may be inferred from the foregoing, Garth and Bartholow agreed to buy La Abra mine, issuing to Hardy stock in the

company to be organized to the amount of $22,000. The object of the mission upon which they had set out from New York had been accomplished, but their work was by no means ended. Men who could so easily be captivated by a stranger in New York with a lot of samples, by an unknown California miner who made himself an uninvited but agreeable traveling companion, and by a metallurgist and mining engineer who was opportunely waiting for them on their arrival at the mines, with a report of his survey and plans for the development of this historic mine—such men were fair game for this sharp Spanish miner, as he proved to be, who had made himself their host during their stay at Tayoltita. I can not do better than let Mr. Garth tell his own story, as given on cross-examination (~~Resp. Ex., 73~~):

Q. You bought some other mines there, did you not, besides La Abra?

A. Yes, sir.

Q. How many did you buy?

A. I do not remember, but a number. I think they are of record here, but my memory does not serve me now.

Q. El Cristo was one of them?

A. Yes, sir.

Q. Who did you buy that from?

A. From Juan Castillo del Valle.

Q. What did you pay Del Valle for his mines?

A. We paid him $50,000 in gold.

Q. What sort of tests did you base your judgment on, you and Mr. Bartholow, as to the value of those mines?

A. We had some of the ores that were beneficiated there.

Q. Did Del Valle have a great exhibition of silver there as the product of his mine?

A. A great deal of it.

Q. Give us an idea how much you saw.

A. It was what they call, I think, 150 pounds to a pig—something like pig lead, only it is broader and two make a carga—that is, 300 pounds, as I understood it out there. It is in 150-pound silver pigs, as I call them. I should judge there were 10 or 15 or 20 tons, perhaps, judging by what somebody said.

Q. What sort of place was it kept in?

A. In his storeroom. He had a stone warehouse and a store there surrounded by a wall.

Q. He did not live there, did he?

A. Yes, sir.

Q. Did he not live in Tayoltita?

A. That was in Tayoltita. The whole thing I am talking about was in Tayoltita.

Q. My question is, Whether his residence was at his warehouse where he had all this silver?

A. His dwelling when I was there—I suppose when he had no company there he put us in his office in the same building or room, which is twice or three times as big as this room. Then the warehouse had the silver in it, and other goods and dry goods, and he stayed in a little house near by. He had a general store there.

Q. It was an ordinary storehouse?

A. Yes, sir.

Q. Was it upon your judgment, then, that this enterprise was gone into?

A. I suppose it was, in a great degree.

This is a strange story. It seems almost incredible that intelligent business men could be drawn into a great enterprise under such circumstances. Nothing more fully illustrates the confiding character of Garth than his belief in the vast pile of silver which he saw in Del Valle's storehouse—"10 or 15 or 20 tons," he says. According to the valuation of silver at the time, as fixed by the witnesses (Compl. Ev., 83) and accepted in respondent's brief (p. 196), there was piled up in Del Valle's storehouse, in the belief of Garth, pure silver to the value of $360,000, if 10 tons, and $720,000 if 20 tons. To make such a statement is its own refutation. No man in his right mind could believe that such a vast sum of silver would be collected and allowed to remain in that remote and unprotected locality. Garth told this story to the Senate committee investigating this claim, and Senator Morgan, the chairman, who seemed astounded at his credulity, in the kindness of his heart, sought to extricate Garth from his embarrassment by some questions, as follows (Senate Report, 122):

> Q. In what part of the store did he keep these bars?
>
> A. He kept them in his storeroom. He had a store that was, maybe, 80 or 100 feet long; I don't remember now; quite a considerable house, and in that he had these stacks of silver.
>
> Q. Did they have a bright, lustrous appearance like silver, or did they look dark?
>
> A. Well, I don't think they were particularly bright. I don't remember that they shone like a new dollar or anything of that sort; I don't think they were.

Q. Do you know the distinction between pure silver and the mat from which silver is obtained by smelting?

A. No; I should think that depended on the quality of the ore; I don't know.

Q. You don't know the difference between the "mat," as it is called, and the silver bar?

A. I don't think I have seen the mat, as you describe it. He said it was valuable; I don't know. I suppose it was such as he had been always taking from there.

Senator Morgan's well-meant effort proved a failure, as might have been expected in the case of a purchaser of mines who did not know the difference between pure silver and the mat from which silver is obtained by smelting. But there are other facts which throw light upon the purchase of the Del Valle mines. Francisco Torres, a witness examined and cross-examined in this suit, an experienced miner, who had lived in the locality of these mines all his life and worked some of them, testifies as follows (~~Compl. Ev., 93–4~~):

Q. Were there any ores in those three mines, in the patio at the mines or at the hacienda, when the sale was made?

A. There were about 80 cargas or loads of ore from the mine known as La Luz in the patio of the hacienda. It was then being reduced.

Q. Did you see the ore that you speak of at that time?

A. Yes; I saw the ores.

Q. Did you see at that time the American gentleman that came to buy the mines?

A. Yes, sir; I saw several gentlemen there, but I did not know who they were. I was told that

they represented parties belonging to a company who desired to make the purchase.

* * * * *

Q. Do you know what result those 80 cargas of ores from La Luz showed when those gentlemen were there?

A. Yes, sir; I did. They yielded 500 marcos of silver, or 250 pounds of silver.

Q. How did it happen if, as you say, La Luz ores were very poor, and Del Valle and Manjarrez lost $40,000 working La Luz—how does it happen these 80 cargas yielded so much?

A. Because they found a very rich ledge of ore in the mine which produced the 80 cargas of ore which I have already referred to.

Q. Did you ever see the ledge from which these 80 cargas came?

A. Yes, sir; I saw it, and I was afterwards the owner of it, and I also lost $9,000 by the operation, having been induced to make the denouncement by reason of the richness of the ore. I made the denouncement after the mine had been abandoned by the Americans. It very often happens that rich veins are found after working the mine; then the ledge disappears and another rich vein is discovered. This happens after large sums of money have been expended in developing the mine.

My learned friend, the respondent's counsel, in his brief seems to think that Torres is not a very reliable witness, because he can not read, and in some respects his statements are alleged not to agree with those of other witnesses. I hope to recur to this matter later, but I feel sure your honors, on reading Torres's testimony, will accept it as that of a straightforward and candid witness. Assuredly he would not invent a story like the one just

read from his evidence. Witnesses before the commission testified to various other incidents calculated to deceive the American visitors as to the character of the mines; but we need hardly go beyond Garth's own testimony for such evidence. That he formed a very exaggerated estimate of the value of the mines will be shown further along.

PREPARATORY WORK AT THE MINES.

Having completed the purchase of both La Abra and and the Del Valle group of mines, Garth and Bartholow left, the former to go to New York to organize the new company, and Bartholow to San Francisco to purchase "a ten-stamp mill and other machinery and modern appliances for running or working the same at said mines." I have already shown from Garth's testimony that the enterprise was entered upon solely upon their judgment, and Bartholow in his deposition states that the purchase of this machinery was determined upon by Garth and himself. (~~Ex. A, 473.~~) We thus see from P. 167 the sworn declarations of these two persons, neither of whom had any experience whatever in mining, that they deliberately embarked on a great enterprise in a remote part of a foreign country then distracted by civil war, purchased mines, and proceeded to invest extensively in costly machinery, without the aid or counsel on their behalf of a single expert mining engineer, assayist, or practical miner. It would require no prophet to predict the result, but for a proper determination of this suit it becomes necessary to follow the history of this enterprise to its conclusion.

Up to this point we have had to depend upon the oral testimony of fallible witnesses. But from this time onward to the final collapse we proceed upon the solid ground of written evidence, recorded in regular sequence and written down at the time the events occurred and by the officers, responsible representatives and agents of the respondent in the present suit. My learned friend in his brief seeks to question the perfectness in some respects of the letter book of La Abra Company, but he accepts the genuineness of the letter book, and resorts to it frequently in his efforts to sustain his argument. This is a great gain for the cause of truth. For many years, when this book remained for months in the hands of the Secretary of State, when its contents were laid before Congress, and when the book itself was submitted to committees of Congress, its authenticity was openly questioned, and it was frequently referred to as a forgery. I shall notice more in detail hereafter Mr. Kennedy's allegations as to the imperfect state of the letter book, but I desire now to refer to some of the undisputed facts established by that book.

Garth was back in New York by November, 1865, and Bartholow had returned to Tayoltita by January 1, 1866. The first letter in the book bears date January 11, 1866, and all of those early letters are instructive as records of the initiation of the company's operations there. Bartholow's first letter (Ex. B, 239-41) to Garth, who had become the treasurer and business manager in New York, is of special importance. In this first record we have most striking evidence of the penalty which the company had to pay for the mistakes of

its inexperienced managers. It appears that they had made an error in their calculation as to both the weight of the mill and its cost. In place of 30 or 40 tons, its weight proved to be near 80, and as at that time the war was in active operation there the cost of transportation of the mill had been doubled. The cost of the mill, "at first so greatly underestimated," was increased 50 per cent in prime cost and 100 per cent in transportation. The timbers cut in the mountains for the mill frame, 100 in number, were much more expensive than estimated, 54 of which cost $23 per stick. To Garth he writes: "You may think this a very high price, but * * * it is as cheap as it can be done for." He found the site they had selected for the mill had to be changed, and he set to work blasting out great quantities of rock, consuming already 100 pounds of powder in the operation, "and will have to burn a great deal more;" but he had the consolation of informing Garth "much of it is splendid building rock;" to little purpose, however, as we know he constructed the walls of his house of adobe or unburnt brick. I should be glad to read the whole letter, but will content myself with one extract. Bartholow, after detailing the troubles he had so early encountered, writes:

> Had I at the time I agreed to remain in Mexico known that I would have to contend with half the difficulties I have even now encountered I never would have undertaken the task, but as I agreed to do it my pride is enlisted in the success of the enterprise, and I will see it through if it is possible for energy and industry to succeed.

The vision of early acquired wealth created by the tons of silver piled up in Del Valle's storehouse and by the rich ores assayed in their presence, on their first visit, seems to be fading from Bartholow's eyes after only a few weeks' experience, and he longs for the comfort of his countingroom at St. Louis. We shall see a little later how long his courageous resolution, inspired by pride in the success of the enterprise, lasted.

A month later Bartholow writes to Garth in a more cheerful strain. He had, it is true, encountered difficulties on account of the hostilities then actively waged in the country between the mines and Mazatlan, but through his intervention with the authorities he had secured safeguards for his employees and the owners of the mule trains, and very little detention and no loss of property had occurred. The intervening letters to various parties in the letter book show how he had so successfully managed affairs, and in his letter to Garth of March 7, 1866 (Ex. B, 246–48), he gives a lengthy and detailed statement of affairs. Work was actively going on at the mines, both in the extracting of ores and in tearing away the old buildings and in the erection of new ones. In "La Luz" mine he reports a small vein had been struck of "surprising richness;" $1,000 per ton is as low an estimate as he is willing to place upon it; and "El Christo" is turning out better than anticipated, and, referring to the ore, he writes enthusiastically of "the virgin gold plainly seen with the naked eye." When we compare this letter with the outcome which the two later superintendents had to report to the company, as to the value of these ores when

the mill began to turn them into silver, we are reminded of the shiploads of worthless sand which the early settlers of Virginia sent over to England, because it glittered like gold.

But the letter has some items not quite so satisfactory. The buildings projected by Garth and Bartholow have been found inadequate, and additional buildings have to be erected, and, as usual, advice is sent to the New York office of further large drafts to meet the increasing expenses. The letter is the longest in the book, and I shall have to refer to it again, but I close the present review by an extract in which Bartholow expressed both his hopes and fears:

> I am fully convinced that within quite a short period after our works are completed and running it will be demonstrated that this company owns one of the best mining properties on the continent of America, if not in the world; but this, like all other valuable property, will require close and constant attention, as well as systematic judgment and integrity, to realize the profits that ought to be obtained from it, as all may be frittered away by dishonesty or bad management, and instead of the property paying a large profit, if it should be managed like other mining property in this country, it may result in loss; but this can, in my opinion, only occur from the causes mentioned above.

The next and last letter from Bartholow to Garth was dated April 10, 1866. (~~Ex. B, 255.~~) It is a long one, but mainly devoted to two topics—the progress made in the construction of the buildings and mill, and the difficulties he has had in getting up from the seaport his

machinery and supplies, on account of the hostilities more actively waged than ever. The work had dragged along, although Bartholow claimed that under the embarrassments he had done wonders, and in previous letters (~~Ex. B, 243, 246~~) he had fixed upon June 1 as the date when the mill would be in order and crushing the ore; but this event did not occur until nearly a year after that date. The military troubles, as detailed, were certainly bad enough, but Bartholow's account shows that in every instance great consideration was shown for his company, and whatever were the delays and losses sustained, they were only the inevitable concomitants of warfare.

This letter—Bartholow's last—was only two months after he had registered that courageous resolution to see the enterprise through to success. But his successor had some time before been selected and left New York, and was then about arriving in Mexico. Nothing further is heard of Bartholow until this famous claim was being prepared for the commission, in the course of which he committed perjury with the most brazen effrontery, and to which I shall have occasion to give my attention.

SUPERINTENDENCY OF DE LAGNEL.

Julius A. de Lagnel, the new superintendent of the mines, was for many years an officer of the Regular Army of the United States, served as colonel under the Confederacy, and was a gentleman of standing, but without any knowledge of mining. He spent some weeks in New York previous to leaving for the mines, in March, 1866.

During this time he met the directors (Senate R., p. 20) and talked over matters fully with Mr. Garth, who was the treasurer and executive officer of the company in that city. (~~Compl. Ev., 18.~~) Garth told him there was no indebtedness on the mines (~~Compl. Ev., 45~~); that there remained in his hands only seven or eight thousand dollars of company funds; that he must not draw on the company; that the mill would be ready early in the summer; that he (De Lagnel) must look to the mill and ores for needed funds at the mines, and that he expected in addition to receive in New York results from the mines, of which Garth, he said, had the most exalted opinion. (~~Compl. Ev., 27;~~ Senate R., 21.)

When De Lagnel arrived at the mines he found a very different state of affairs from that portrayed to him by Garth. In place of no indebtedness, there were unpaid obligations incurred by Bartholow aggregating $24,170. (~~Ex. B, 278.~~) To meet this indebtedness De Lagnel, in spite of Garth's instructions not to draw, did draw on him, in May, 1866, for $15,000 (~~Ex. B, 264~~), and again in June for another $15,000 (~~Ex. B, 266~~). But this was not all. August 16 he writes Garth (~~Ex. B, 275~~) of the continued delays and embarrassments in getting the mill ready, and says: "I am compelled to draw on you, despite the inconvenience it may cause you," and he notifies him of another draft for $10,000. And again, on November 17, he writes Garth, in continuation of the old story sent to New York from Bartholow's first letter onward, of delays and disappointments. (~~Ex. B, 286–7.~~) This letter is somewhat pathetic, as De Lagnel details

his efforts to avoid another draft by testing the company's credit in Mexico by way of an advance or loan: "I tried in vain in the country to obtain relief, but the doubt and distrust of American companies is so great that I failed utterly;" so, rather than fall into the hands of Lareaga, the Jew, he adds: "In the utter impossibility of obtaining aid here, I have, despite the tone of your letters, drawn upon you for the sum of $7,000." After this we might anticipate an end of the business of drawing drafts, but the opening paragraph of the letter of February 5, 1867 (~~Ex. B, 297~~), lays the foundation for its continuance by setting forth the further delays and disappointment in the work, and concludes by stating that the only alternative of stopping operations at the mines altogether was to draw another draft, which he does, for $7,500 (~~Ex. B, 298~~). After setting forth this justification, he says: "I have acted as my best judgment dictated, and as I trust you will approve."

Here we find the company, more than a year before the final collapse came, on the very verge of suspension and disaster. It is plain from De Lagnel's letter that if he had not drawn and secured the cash upon this draft the operations of the company would have been completely paralyzed, and it would most likely have then passed into the state, as Garth described it, of "innocuous desuetude" which came upon it in the spring of the next year. I have not dwelt upon the letters of De Lagnel to the company during the year of his superintendence, in my desire not to become tedious to the court, but I commend them to your honors' careful perusal as

showing what obstacles the company had to contend with on account of its own bad management. For instance, frequent reference is made in these letters to the ditch (Ex. B, 269, 274, 280, 284, 287, 297), which was an expensive work, requiring a stone bottom and walls of nearly half a mile in length to bring water from the river to run the mill. When finished, it was found that on account of bad engineering it did not bring the water, and the work had to be all done over again, at great expense and delay. There is not a word of complaint in the letters of injustice or oppression on the part of the military authorities, but a constant reference to the difficulty of communicating with Mazatlan, the seaport, on account of the hostilities. I especially direct attention to the visit of the former owner of the mines, Castillo del Valle, who had recently returned from Spain. De Lagnel writes Garth (Ex. B, 294) that "he expresses great interest in the enterprise and its success, but makes no disguise of the fact that he thinks $100,000 too much has been spent;" and he then proceeds to tell what ought to have been done, which was the very reverse of the company's operations. Garth had apparently written De Lagnel, in the great financial straits of the company, to try to get money from Del Valle, for De Lagnel writes: "Under the circumstances there is not the slightest probability of his taking a dollar's worth of stock or advancing a cent unless he sees with his own eyes good grounds for the investment." And no relief came from that quarter.

De Lagnel had been at the mines but a short time when he notified Garth that he must provide someone

to relieve him, for, apparently in response to a letter from Garth, he writes on October 8 (~~Ex. B, 284~~): "As to sending a successor, I deem it best to tell you now that no money could tempt me to remain in the country longer than next 1st March." Hence the letter of February 5, 1867, was his last letter to the company, but he did not get away till April, as he waited to see the mill finally in operation. The company had had full notice of De Lagnel's intention to leave so as to have provided a successor, but that was never done. Charles H. Exall had been employed and sent out from New York by the company the year before and had been at the mines for several months. As no successor was appointed, De Lagnel, who had in most emphatic terms notified the company that he would stay no longer, had no alternative but to put Exall in charge. As to this event, Garth testified on cross-examination (~~Resp. Ev., 74~~):

> Q. What was his (Exall's) qualification as a metallurgist?
>
> A. I don't know that he had any. He did not go as a miner or as a metallurgist. He just went to aid De Lagnel as an accountant or as an attendant in the store for goods to be sold and bought.
>
> Q. Did it not occur to you as a little risky to have a man so unqualified succeed De Lagnel in the charge of an important enterprise like that?
>
> A. Yes, sir; it did.
>
> Q. Did it not look like inviting disaster?
>
> A. I do not know that it did; but if a suitable man could be found—a miner or experienced mill man, or a man qualified to fill the superintendency of the mine—we intended to get him. *But it was never done.*

Q. You just let it go along in the same old way?
A. Yes, sir.

* * * * *

Q. I think you said in your examination before the Senate that you thought things would have gone much better if somebody had been in charge of that enterprise who knew something about it, did you not?

A. I think so still.

In the same connection Garth testified that De Lagnel was no miner, but "got so he could make assays." And this is confirmed by De Lagnel in his examination in this suit. He says (~~Compl. Ex., 31~~) that in conference with the officials in New York before coming out, "I told them at the same time that I had no practical knowledge of mining, and that I was not skilled, and doubted my competency to go, and went reluctantly * * * under dire pressure of necessity." In the Senate investigation (Senate R., 20) he says he told Garth he "had no previous experience as a miner; had never been in a mine." Thus the procession of incompetents follow each other in unbroken succession, and Exall, the bookkeeper, is left in charge. Before going, however, De Lagnel gives his attention once more to the business of drawing drafts. Notwithstanding the receipt of further letters from Garth telling him he could meet no more, and not to draw again, yet the dire necessity of the situation forced him, in order that Exall should not be entirely without funds, to draw again, April 10, on Garth, through the Bank of California, and have it cashed in Mazatlan. (~~Ex. B, 301.~~) This $5,000 was refused payment by the company, and was returned unpaid. But before notice of

this action was received at the mines, the funds there being exhausted. Exall drew another draft for $3,000, June 13. (~~Ex. B, 302–8.~~) But there is a significant fact connected with this draft. It had been possible to have its forerunners cashed at Mazatlan, but now the credit of the company had fallen so low no one of the merchants there would take the chances of its payment, and it had to be sent on to the Bank of California, which, having by that time learned of the fate of the $5,000 draft, refused to cash it. Its disastrous fate ended the business of drawing drafts on the home office.

SUPERINTENDENCY OF EXALL.

I will not at this time follow Exall through the period of his gloomy and inglorious régime at the mines, but ask your honors' attention to the situation of affairs in New York City. Garth had returned with most glowing accounts of his experience and with exalted ideas as to the value of the mines, as we have seen. He told De Lagnel about the records of Durango, showing by the Royal fifth what immense wealth they had yielded in former times, and was thoroughly convinced that they were the deposit of immense wealth, in proof of which he showed him a sample of ore he had brought back with him from the mines which assayed $1,000 in silver and $300 in gold per ton. (Senate R., 20–1.) It seems a company was formed without any difficulty, and all went well at the home office until the stock subscribed had been paid up. When the funds thus obtained were exhausted and De Lagnel's first drafts began to arrive,

drawn to pay the large and unknown debts contracted at the mines by Bartholow, then the trouble began. Garth, in his deposition in this suit, has told us that the stock, which had all been paid up, was exhausted by De Lagnel's drafts, and as they continued to arrive "when there was no money in the treasury the directors, including Mr. Collins and myself and some others, advanced the money to the company, and that was charged to the company." (~~Resp. Ev., 79.~~) P. 728

As a witness in this suit, your honors will find, on examining his deposition, that he is most unsatisfactory. On the very subjects about which he might give the court information of value his memory, conveniently for his interests, fails him. To-day he is an unwilling witness; but fortunately for the cause of truth and justice there was a time when Mr. Garth had a vivid recollection of events, and while they were fresh in his mind he wrote them down with his own hand, and that record is now in the possession of this court. In his letter to De Lagnel of November 20, 1866, after he had received the first three drafts drawn by him, Garth gives him notice that he will not be able to meet any further drafts (~~Ex. B, 293),~~ but, as we have seen, three more drafts followed each other in quick succession. Garth had received one of these last, being the fourth drawn, when he wrote his letter of May 10, 1867, to Exall, the original of which is on file in this court and is printed in full in Exhibit B, ~~318~~, of complainant's bill. He there says: P. 287 P. 252

> The affairs of the company here are much embarrassed; a few of the directors have advanced all the money to carry on the operations and have been nearly ruined by it, and are not able to afford any

further aid from here, and look anxiously to be reimbursed very soon from the products of the mine, and it is to be hoped your best energies will be exerted to afford relief.

The next letter, of May 20, reports the manner in which the fifth draft was paid, and the fate of the sixth and last draft (that for $5,000), as follows (~~Ex. B, 319~~):

We are yet without any advices from the mines later than 5th of February last, dated at Mazatlan. At that date we were advised that everything, after a long delay, was about complete, and that we might soon look for good results from the enterprise; but that, the supplies being exhausted, it was found absolutely necessary to draw on us for $7,500. This draft arrived on 2d April last, and was paid by one of the directors of the company, as it was considered that was *surely the last* that would be needed, and we expected to return the money by an early remittance of bullion from Mexico. You can judge of our surprise and chagrin when the last steamer arrived, instead of bringing Col. De L. with some fruits of our works, a draft for $5,000 gold was presented for payment by Lees & Waller, drawn by De Lagnel, from Bank of California, and dated 10th April last, and of which we had not received any notice or advice whatever, and have not yet received any. * * * As it was found impossible to raise the means to pay the draft, it was protested and returned unpaid, and you must make some provision for its payment when it gets back. I do trust that before that date you will have plenty of means to do so. I would now again repeat that I have made every effort possible to raise money here and have failed and I have advanced all I can possibly do, and the other directors have done the same; the

stockholders will do nothing, and it is probable the company will have to be sold out and reorganized.

This protested draft made its way back to Mexico, as indicated in Garth's letter, and we have the following account of it in Exall's letter to Garth of October 6 (~~Ex. B, 310~~):

> The $5,000 draft of De Lagnel's was sent to a house in this place (Mazatlan) to be collected, with instructions to seize the property in case it was not paid. It troubled me a great deal, and I had much difficulty in warding it off. The concern to whom the draft was sent showed me his instructions, and also the original draft. Fortunately for the company, there was a flaw in the draft. De Lagnel failed to sign his position as superintendent La Abra Silver Mining Company; simply signed his name, making it an individual affair. This was the only thing that kept them from seizing the property. I told them they could do nothing with the property here, as the company were not obligated on the draft.

But two months later the draft again appeared to plague Exall, as he wrote Garth December 18 that the agent of the Bank of California was about taking steps to bring suit in the Mexican courts, notwithstanding the shrewd defense he had before set up; and he writes Garth (~~Ex. B, 313~~):

> For God's sake, telegraph to and pay them. Matters of this nature once getting in these courts it takes large sums to oppose them. The first steps taken by the courts will be to send some one to the hacienda to see to and secure everything. This will, of course, stop everything and make it impossible for me to protect your interests. For your own sake in the matter, pay them before things go further.

THE BANKRUPTCY OF THE COMPANY.

Meanwhile an important event had occurred in New York. We have seen what exaggerated views Garth, and doubtless the other directors, had as to the great richness of the mines. Their patience had been severely tried on account of the long delay in getting the mill in operation. Garth's letters show that they expected that event to be followed by immediate and large shipments of bullion to New York to pay off the debts and to begin to make dividends to the stockholders. But your honors will notice that the next letter from Garth reports the arrival of De Lagnel in New York. He had been in charge of the mines for a year, during which time large quantities of ore had been extracted to be ready for the mill when finished. He was fully informed of the difficulties that had to be surmounted, of the great additional outlay which had occasioned his oft-repeated drafts, and was conversant with the exact conditions of affairs at the mines; and he had overstayed his time there long enough to get the product of the first run of the new mill, which had been awaited by all with such great expectations. De Lagnel reached New York between May 20 and May 30, 1867. In his letter of May 30, Garth writes to Exall (~~Ex. B, 319~~): "Since my last letter Colonel De Lagnel has arrived and made known to us something of the state of things with you. I must confess that we are amazed at the results." Garth and his associates are at last disenchanted. Their dream of great wealth is over. Garth's "very exaggerated ideas" of the mines, as to

P. 437

which De Lagnel testifies (~~Compl. Ev., 27~~), are all changed. De Lagnel has made his report—a plain, unvarnished tale.

P. 284

Garth writes again to Exall, June 10 (~~Ex. B, 320~~): "The account that Colonel De L. gave us of the quality of the ores on hand was most unexpected and a fearful blow to our hopes." And he adds: "There is no money in the treasury, and we have no means of raising any, and a few of us have advanced all that we can do." It was apparent the company had reached a crisis in its affairs, and the directors proceeded to recognize it in the most serious manner in their power. Garth, as we have seen, had already written Exall "it is probable the company will have to be sold out." And in execution of this intent the directors proceed deliberately to commit felo-de-se—to advertise to the world the bankruptcy of the company—a practical winding up of its affairs. We have seen that Garth had met De Lagnel's drafts after the company's treasury was exhausted by advances from several of the directors. For these advances notes had been given by the company, and these notes had all been indorsed over to John H. Garth, brother of David J. Garth, the treasurer and executive officer of the company, and a friendly suit against the company was brought, June 8, 1867, by John H. Garth, in Kings County, New York, Britton & Ely, the attorneys of the company, being the plaintiff's attorneys also. The indebtedness was represented by eight notes held by six different directors named in the suit, and a judgment by default was rendered July 3, 1867, for $53,670.11. (~~Compl. Ev., 8.~~)

P. 468

After this formal confession of the bankruptcy of the company by its own officers little else remained to be done. Not another dollar was sent to the mines and no more drafts paid. The only return from the mines ever received in New York was the result of the first run of the mill, which Garth describes "as a little piece of bullion silver that came from there. I think it brought about $300." (Resp. Ev., 68.) P. 717

Garth in his subsequent letters to Exall still expresses some languid hope that the ores may be found better than reported, but he gives him distinctly to understand that no further help can be expected from New York. One week after the bankrupt judgment, July 10, he writes Exall (Ex. B, 321): P. 285-

> You will see from all my letters that no further aid can be given you from here, and that you must rely upon the resources you now have, and which, we think, ought to be ample to pay off the debts and to sustain you in current expenses, which you should cut down to the lowest possible point.

But he prudently adds in regard to benefitiating the ores on hand:

> If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned.

Under date of August 10 he writes again to Exall (Ex. B, 322): P. 286

> The directors of our company are trying to reorganize and to raise money to pay off the debts and to prosecute the work anew if possible, but I am constrained to say with but little hope of success.

The correspondence from Garth closes with his letter of October 10, 1867. He there acknowledges receipt of Exall's letter of August 5, with which is inclosed the only report of the run of the mill of which we have any detailed record. After reading it Garth writes (~~Ex. B, 322~~):

P. 286

> We are deeply pained to find that you are not well and that you are still without favorable results in the enterprise from which we all had such high hopes of success. I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources of the mines and mill to keep you going and to relieve you of debts heretofore contracted. It is not possible for us to direct any particular course for you, but only to urge you to try and work along as well as you can, cutting down expenses, and avoid embarrassing yourself with debts.

The letter closes with a reference to the $5,000 protested draft, which is back again in New York to disturb the directors.

The Exall letter of August 5, whose receipt is here acknowledged, contains the run of the mill from May 27 to July 13. The report there given shows that ores which cost the company in extracting and reduction $29.06, yielded the company $18.78, or a dead loss of $10.28 per ton. Well might the treasurer write to the superintendent: "If it costs more than it comes to * * * the sooner we stop the better for all parties concerned." And it appears this advice was acted upon at the mines. The letter was received by Exall in December, as appears from his letter of the 18th (~~Ex. B, 313~~):

P. 277

> Received by steamer yours of October 10, informing me of your inability to send me the means to

> operate with and meet my obligations. I have in previous letters expressed the condition of affairs with me, and begged that you would do something. Thus far I have been able to protect your interests here, but affairs have gotten to such a point that I am unable to do so longer without money.

Then follows an account of his troubles over the $5,000 protested draft, and in closing states: "I am doing nothing at the mines, and have only one person left with me." His next and last letter is January 24, 1868. He had no letter from Garth to acknowledge, and in the silence of the home office he sends forward this wailing inquiry (~~Ex. B, 317~~):

> What is your intention? Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them. If by next steamer I receive no assistance from you I intend leaving for the East.

And we know from Exall's letters to Granger that he carried out this intention and did leave the mines the last of February and went on to New York, and on his arrival there found Garth and the directors unwilling to do anything or to take any further interest in the bankrupt enterprise. I shall not at this time review the Exall-Granger letters, as I shall have occasion to do so later.

THE CAUSES FOR THE COMPANY'S FAILURE.

Thus ends the history proper of La Abra Silver Mining Company, for the events which followed are merely the history of a gigantic fraud. I have dwelt at some

length on this branch of the subject, because I have felt that it was of essential importance that your honors should have a clear statement of the real history of this enterprise. It is established beyond any doubt that it was undertaken upon the judgment of men who had no practical knowledge whatever of the business and who were misled by designing men; that it was undertaken at a most inopportune time, and in a locality distracted by civil war; that its managers and all its superintendents were entirely unfitted for their positions, without any knowledge of mining, and as a consequence the enterprise was badly planned and money uselessly expended; that at the end of long delays when the ores came to be reduced they were found unprofitable; that the company, hopelessly in debt, went into practical bankruptcy, and had no other recourse but to abandon the enterprise. These facts are supported by such unimpeachable evidence that no amount of perjury can overthrow them. Had they been as fully before the commission as they are now submitted to this court, the claim of the company would undoubtedly have been rejected. But the question which your honors have to determine is not the integrity of the claim,* but whether the award under it was obtained by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the company, its agents, attorneys, or assigns. I accept the

* Later in the argument, attention being called to this assertion by one of the justices of the court, Mr. Foster stated what he meant to say was that the claim was not before the court upon its merits with a view to rendering an award, as was done by the commission, but for the purpose of determining the question of fraud as set forth in the Act of 1892.

contention of respondents' counsel in his brief that the Government is bound to prove this fraud, and I propose to show that this has been established beyond any doubt.

THE LETTER BOOK OF THE COMPANY.

An important part of the Government's testimony to prove the fraud is the company letter book, the authenticity of which is admitted; but a strong effort is made to create the impression that the book has been tampered with and that important letters have been abstracted—letters which, it is alleged, were pasted in at Mazatlan. I am ready to admit that De Lagnel did write certain letters soon after his arrival in the country which do not appear in the book, but I contend that their absence is properly accounted for. Drafts were drawn in May and June, and De Lagnel thinks he must have notified Garth of these and that he wrote a letter to Garth about the condition of affairs at the mines, so different from Garth's representations. Then letters were written at Mazatlan, to which place he had gone in company with Bartholow, who was on his way home. De Lagnel deposes, referring to Bartholow (~~Compl. Ev., 36~~), that "when he gave me the books he held them in his possession until the very last moment." And this statement is confirmed in a letter to Garth, written later, in which he says: "General Bartholow continued to hold the books for settlement and balances up to the date of his leaving, delivering them to me at Mazatlan." (~~Ex. B, 292.~~) If, as De Lagnel testifies, he wrote these letters at Mazatlan, he did so before he had possession of the books, and that

is a good reason why they do not appear. De Lagnel has a distinct recollection that he wrote another letter not in the letter book about an assay at La Puerta. As to copying the letter, he says (~~Compl. Ev., 36-37~~):

> Q. Now, do you know of any reason why that letter does not appear in the letterpress copy book?
>
> A. I can not answer that question.
>
> Q. Have you any recollection as to whether you made a copy of that letter in the letterpress copy book or not?
>
> A. I have no recollection of it now, but I take it for granted that I must have.

When first asked he thought he wrote the letter at Tayoltita, but on cross-examination he could not say whether it was at Tayoltita or at Mazatlan. At this distance of time we can well understand how uncertain must be one's recollection of such details. De Lagnel says he was accustomed to write private letters to Garth (~~Compl. Ev., 36, 47~~) which he did not copy in the book. Of one of these he speaks as follows (~~Compl. Ev., 47~~):

> Q. Why did you ask Mr. Garth to come down in the private letter of which you speak, which is not found in the press copy book?
>
> A. Because I felt that I was unequal to the charge, and I did not care to have anyone's interests in my hands to their injury.
>
> Q. What induced this feeling on your part?
>
> A. I suppose the feeling that everybody has who feels himself in a false position. My idea was that an expert, a man well versed in the business, should be there. There was too much at stake, too much at interest, and I felt that I was not equal to it, and, therefore, I asked him to come down and look at

> the condition of things himself, and if he saw fit, to either take charge himself or put some fitting person in charge.

If such letters as this were intentionally omitted from the book, we may well understand why others do not appear, without imputing foul dealing. Respondent's counsel refers to other letters which he would have us believe were purposely abstracted, but there is no positive proof that any of them were actually copied in the letter book. The original book is in the hands of the court and we confidently invite a critical examination of its condition. It will be found that its numbered pages are consecutive, and when it is remembered that it was ten years after Exall abandoned the mines before the book came into the possession of the Mexican Government, it must be admitted that it has been well preserved in that out-of-the-way corner of the world.

WORKS OF HUMBOLDT AND WARD.

I propose now to take up the averments in the claimant's memorial, and the false and perjured testimony presented to sustain them. After naming the mines which the company purchased and owned, the memorial says: "Said mines were of extraordinary richness, so much so that they became of historical interest, being especially mentioned for the abundance and richness of their ores by Baron Humboldt and Mr. Ward in their respective works." In view of this averment, and of the interest manifested by some members of the court on this point at the former argument, I have thought it of sufficient importance to notice it. Bartholow, in his

affidavit, swears (~~Ex. A, 472~~) he "had noticed the flattering accounts of the wealth of said mines by Baron von Humboldt and the English explorer, Ward, in his history of the successful working of said mines at Tayoltita by the celebrated Zambrano." Smith, the other witness for the claimant, to sustain this averment, is more precise. Speaking of the group of mines owned by La Abra Company, he says (~~Ex. A, 346~~): "They are somewhat famous in history, having been favorably spoken of by Baron von Humboldt in his Book of Travels (Essai Politique), and commented upon at length by the British explorer, Ward, in reference to this same La Abra property." An examination of Humboldt's "Essai Politique" fails to find a single reference to any one of the mines owned by La Abra Company.

The portion of Ward's Mexico quoted by Smith in his deposition is as follows:

> (Page 559:) "The great streets" (of Durango), the Plaza Mayor, the theater, and all the principal public edifices were built by Zambrano, who is supposed to have drawn from his mines at San Dimas and *Guarisamey* upwards of thirty millions of dollars. (Page 573:) A little below *Guarisamey*, and in the *same ravine*, in the district of San José *Tayoltita*, which contains the celebrated mines of "*La Abra*," one of the last worked by "Zambrano." It was opened in bonanza, and continued so, to the depth of 100 varas, where the progress of the work was impeded by water, and this was never drawn off in consequence of the death of the proprietor (Zambrano), which took place at Durango in eighteen hundred and seven (1807). His nephew, at the commencement of the revolution, collected what money

he could by extracting the pillars of all the mines belonging to the house of Zambrano, and fled to the peninsula with the produce. The mine now belongs to Don Antonio Alcade, one of the executors of Zambrano, and *would, if worked anew, with a little science and activity, probably yield immense profits.* The whole should be undertaken, however, as *one* negotiation, as in such insulated districts to make roads and organize supplies for a small establishment is a very unprofitable task. Of the amount of the silver drawn from the Sierra Madre by Zambrano during the twenty-five years that he continued his labors, nothing *certain* is known; but Mr. Glennie, from whose notes I have borrowed the whole of the details given above, states that he himself saw in the *books of the custom-house of Durango eleven millions of dollars registered as the sum paid by Zambrano as the "King's fifth,"* and this fact was confirmed to me by the *governor, who examined the registers himself in order to ascertain it.* It is likewise corroborated by the number of mines opened at Guarisamey and the surrounding districts, by the *peculiar richness of their ores* and by the immense wealth of Zambrano (diminished as his profits must have been by the expenses of working), of which so many splendid monuments remain (p. 130). *These immense riches were derived principally the five great mines,* "La Candelarea" (at San Dimas), "San Juan Nepomuceno," "Cinco Senores," "La Abra," and "Tapia." On another page, which I have failed to enter upon my note-book, he says, "These mines often yield 20, and even as high as thirty (30) marks per carga of 300 lbs."

The foregoing are the quotations made by Smith. But there are other parts of Ward's Mexico as pertinent to the case as the extracts already quoted. In Vol. II,

page 22, it is stated that the Guarisomey and San Dimas districts produced in fifteen years (1810–1825) $461,176.

(P. 74:) In every other commercial enterprise *some previous acquaintance with the subject* might have been thought necessary; but the mines were to be an exception to all ordinary rules, and on the principle, I suppose, of taking *omne ignotum pro magnifico* vast sums were embarked in schemes of which the very persons who staked their all upon the result know literally nothing except the name. (Pp. 75–6:) Nine-tenths of those who engaged in the arduous task did so under the conviction that *water* was the only obstacle which they had to overcome, and that the possibility of surmounting this by the aid of English machinery was unquestionable. * * * The practical experience of the native miners was underrated; their machinery condemned without any previous inquiry as to its powers or the different degrees of perfection which it had attained in the different districts. Gradual improvement was pronounced too sluggish a process, and Cornwall was drained of half its population in order to substitute an entirely new method for that which had been endeared to the Mexicans by the experience of three centuries. The total failure of this attempt was the natural consequence of the want of consideration with which it was made. * * *

(Pp. 80, 81:) In general the selection of mines among the first adventurers was determined by a reference to Humboldt. * * * Humboldt never asserted, or meant to assert, that a mine, because it was highly productive in 1802, must be equally so in 1824. * * * Unfortunately, the consequence of these statements was to direct the attention of

the world exclusively to spots which, from the enormous quantity of mineral wealth that they have already yielded, may fairly be supposed *to have seen their best days.*

HOSTILITY OF THE MEXICAN AUTHORITIES.

The gravamen in the claimants' memorial is the hostility of the Mexican authorities, and this is repeated in a variety of phrases. It avers that the company were compelled to abandon their property "by reason of the unfriendly and illegal acts of the Mexican officials." After reciting in general terms these acts, it states that "from the said persecutions, outrages, and insecurity it became impossible for the company to work the said mines, and the same were abandoned;" and "that the said enforced abandonment of said mines utterly ruined said company." These averments are supported in the memorial by certain alleged illegal and violent acts, but it carefully avoids giving names, dates, or places, and we are therefore driven to the testimony before the commission to ascertain with any precision what are the acts relied upon to support the memorial and the award. I propose to take these up, as far as possible, in chronological order.

THE SEIZURE OF MULE TRAINS.

It is claimed that the company "purchased great numbers of mules and their equipments," and that "the authorities repeatedly seized mule trains of the company loaded with provisions and appropriated the same to their use." This allegation it was sought to maintain before

the commission by various witnesses. The most of them plainly base their testimony upon hearsay evidence, but the three witnesses who are in any degree precise in their statements are Bartholow, Exall, and John Cole. Bartholow swears (~~Ex. A, 476~~):

P. 170

> Two entire mule trains, loaded with provisions and supplies, belonging to said company, were captured by the military authorities of the Mexican Republic, and the mules and supplies so captured and taken by force were appropriated to the use of said army, and I never was able to recover any of said mules or supplies.

Deponent then proceeds to relate his appeal to General Corona, who referred him to a General Guerra, or Parra, without success. He says (~~Ex. A, 477~~):

P. 171

> The value of the mule trains and supplies so taken from the company by said military while I was superintendent was not less than $25,000.

P. 153

Exall swears (~~Ex. A, 461~~):

> Under Colonel De Lagnel and my own superintendence about 125 [mules] were so captured [by the military] on the road from Mazatlan, and about 20 stolen from the hacienda. I do not know how many were so taken from the company under Gen. Thomas J. Bartholow's superintendency, but I have understood from him that a number of trains were so captured by the said military.

But John Cole is the witness who deposes to the seizure of the trains with most precision. (~~Ex. A, 362.~~) He says:

P. 356

> He had the control of the forwarding of said machinery and supplies by three, and sometimes

four, mule trains owned by and in the employ of said La Abra Company, consisting of about 40 mules to the train. * * * The authorities of the district of San Dimas * * * to the knowledge of deponent, seized upon three of the mule trains of said company during the year 1866 and the early part of 1867, and converted the same, together with all the supplies packed upon them, to their own use or the use of their Government * * * (p. 364). The mules captured from the said company as aforesaid were of the largest and best quality of mules; they were worth as much money as any mules in that country; about 120 of them were so captured, to his knowledge. I have never known said company to own a poor or bad mule or a poor horse. * * * He does not know the amount or value of the supplies taken from said trains, but it was common report amongst Mexicans there, at the time of the forced abandonment of said mines and property of said company, that it had lost mules, pack saddles, and supplies, in the three years named, to the amount of $75,000 to $100,000.

Now, I make the declaration boldly that there is not a scintilla of truth in the statements of these three witnesses, and this is plainly apparent from an examination of the letter book. The mines being situated in the heart of the Sierra Madre Mountains, accessible only by bridle paths, the heavy machinery and supplies for the company had to be packed on the back of mules from the seaport of Mazatlan. The most of this work was done in the time of Bartholow's superintendence, early in 1866. In the short space of three months it will be seen that Bartholow refers to this business of packing

more than a dozen times in the letter book, and describes it in great detail. It is there made plain that the company had only a few riding mules and never owned any of the pack trains of mules, but that they were all hired of Mexicans who were engaged in the business. In his first letter to Garth, he writes (~~Ex. B, 239~~):

> Mr. Griffith, William Grove (a new man from Saline County, Mo.), and Dr. Hardy, has charge of all the pack trains; each manages and controls a train; this is necessary for the reason that if some American in the employ of the company is not constantly with the trains, there is great danger, if not a certainty, that the animals would be taken by the military authorities, and besides, I could not get the Mexicans to pack for us unless I agreed to do this; besides, with this arrangement I have a guarantee that my men, animals, and effects will not be interfered with. * * * (~~p. 240~~). After the Liberals got possession of the country and confiscated large numbers of mules, it was with the greatest difficulty that I could get any one to agree to pack at all; and had I not succeeded in getting military protection, our mill would now be lying at Mazatlan.

I give a few more extracts. Writing to J. S. Rice, Bartholow says (~~Ex. B, 245~~):

> Some weeks since I sent to Santiago Papasquia for a lot of mules to pack for me. Some came promptly and are now in my employ, and to-day about 70 more arrived, all of which I fear I can not employ, yet I think I need 20 or 30 of them to finish up my freight from below.

And the remainder he offers to let Rice have. To William Scott, one of the company's employees, he writes (~~Ex. B, 245~~): "The bearer of this letter has a pack

train of 64 mules, which I have hired;" and he proceeds to tell Scott how to employ it. In his next letter to Garth, March 7, he says (~~Ex. B, 246~~): P. 213

> You will bear in mind that our machinery, 80 tons, arrived in Mazatlan December 12; the country through which it was compelled to be packed occupied by Liberal troops and the theater of military operations. This army had taken possession of all the pack animals in the country between here and the port, and therefore I was compelled to send to the vicinity of the city of Durango for mules to transport the mill; and when the animals were obtained I was under the necessity of sending to General Corona for his protection and a guarantee that the men and animals in my employ should not be taken by his forces. All this I obtained, but not without difficulty.

When Bartholow turned over to De Lagnel the charge of the mines he gave him a written statement of various matters, among which is the following (~~Ex. B, 260~~): P. 224 "The company owns 12 mules and 10 aperajos. The titles to these mules I believe to be good."

In the score or more places in the letter book where the subject of packing and mules is referred to, there is not a single allusion to the seizure and confiscation of mules or trains, but on the other hand repeated instances where the authorities showed special favor to the company respecting them. De Lagnel, in his deposition in the present suit, testified as follows (~~Compl. Ev., 29~~): P 487

> Q. Did the company, to your knowledge, during your superintendency, own mule trains?
>
> A. At most they owned twelve mules; not that many all the time, but that is the largest number I ever knew; that is the number of pack saddles we had.

Q. What became of those mules, as far as you know?

A. One or two were lost, I know; strayed or stolen, I couldn't say which; the others I turned over to Exall.

Q. Where is General Bartholow?

A. I heard he was dead, sir; I don't know.

Mr. KENNEDY. We admit his death.

Q. Do you know whether, during General Bartholow's ascendency, the company owned any mules more than you have mentioned?

A. I couldn't say, sir.

Q. Did you converse with General Bartholow when you took charge, in a general way, about affairs?

A. Yes, sir; but I didn't get much information. Yes, he talked to me about it, but I didn't derive all the exact and precise information that I wanted.

Q. Do you recollect whether he told you that the company had owned any mule trains during his superintendency?

A. He never told me that they owned any, any more than I mentioned.

Q. Did he ever tell you anything about any mule trains belonging to the company being captured by Mexican soldiers?

A. No, sir.

Q. Now, did he tell you anything about the detention of trains not owned by the company?

A. There was a hired train that had been seized. He wrote to the authorities and the train was released.

Q. Do you remember General Bartholow's telling you this?

A. Yes, sir.

Frederick Sundell, who was in the employ as assayer of the Durango Mining Company at San Dimas, in the same district, only separated by a ridge of the mountain, and had intimate acquaintance with La Abra Company during the whole period of its existence, in his deposition in this suit stated that his own company did not own its pack mules, but that all its supplies were transported by hired trains. As to La Abra, he testified as follows (Compl. Ev., 66):

Q. Do you know how La Abra Company transported its supplies?

A. The same as our company; by pack trains, pack mules.

Q. Do you know whether La Abra Company owned any mules of its own?

A. No, sir; they never owned any pack mules.

Q. About how many mules did they own, if any?

A. I do not know, but I should think from eight to ten riding mules, used by the superintendent and other employees.

Q. Did you ever hear of any mule trains belonging to or in the employ of La Abra Company being taken by the military forces of the Liberal army?

A. Not during my time, when I was there.

Q. Could there have been any such seizure without your knowing it?

A. No. I understand there was some little trouble before I came there, but they never lost anything. They only borrowed the mule trains and brought them back again, but I could not say anything about it.

On cross-examination, he said he derived his information from George Grassie, who had charge of the Durango

Company's transportation, and was well acquainted with Mr. Grove and Dr. Hardy, who had charge of that of La Abra Company. (Compl. Ev., 84.)

P.S-44

Other witnesses testify to the same effect, but really it is unnecessary to go outside of the letter book to establish the utter falsity of the averment in the memorial as to the seizure and confiscation of mule trains by the Mexican authorities.

Intimately connected with this averment is the following:

> Things finally got to such a pass that one of the personnel of the company, in charge of one of its trains, was openly killed by the Liberal forces and the train seized, and that was made a matter of boast by Mexican officials.

THE MURDER OF GROVE.

Various witnesses on behalf of the claimant before the commission testified to this fact, such as Green, Granger, Clark, and Bouttier, but as their statements are upon their face mere hearsay, it is hardly worth while to quote them. The witnesses who claim to speak from personal knowledge are John Cole, Exall, and Bartholow. Cole swore (Ex. A, 362) that "upon one occasion one of the officers, an American, in charge of one of the said mule trains, was killed by the said troops for attempting to defend the property in his charge; he was acting quartermaster of said train at the time. Deponent says he has heard Mexican soldiers in said Liberal service at that time boast of this murder," and he proceeds to narrate a conversation he afterwards had with

P.S. 6

the captain who commanded the force which seized the train and killed Grove, who told him "referring to the aforesaid murder, * * * that it would 'learn the gringoes' (foreigners) a lesson; that when they (the troops) wanted anything in future they probably would not be denied, as they had been by the quartermaster of La Abra Silver Mining Company's pack trains, * * * and said Mexican officer also told deponent * * * that the capture of said mule train was ordered by his superior or commanding officer."

Exall, who came to the mines after the death of Grove, claims to know the facts as to his murder from official sources. In answer to the question in his deposition as to his knowledge of the murder of one of La Abra employees, and his name, says (~~Ex. A, 465~~):—

> Captain Grove was the person. It was under the superintendency of General Bartholow. Mr. Grove was captain of the supply train, and one of the principal employees of said company. He was murdered by said military, in the district of San Ygnacio, State of Sinaloa, while on the road to the company's mines, and a train of mules loaded with supplies for the company were taken from Grove, as conductor in charge of said train. I am of course familiar with the history of that murder, by reports of the company's officers. I have heard it all, not only from the company's officers, but the Mexican officials. * * * Some of them condemned, or said they condemned, the cowardly plan of said capture, and the brutal and unnecessary murder of Mr. Grove while trying to protect the property of the company under his charge.

Bartholow, being asked as to the name and circumstances attending the murder of one of the company's employees, deposed as follows (~~Ex. A, 477–8~~):

> A. His name was William Grove. He was one of my most valued employees. He was murdered between the town of San Ygnacio and Tayoltita. I afterwards recovered his body. It was badly mutilated by gunshot wounds, evidently produced by a volley of musketry. This occurred in January or February, 1866. At the time of the murder Mr. Grove was in the employ of the Abra Company as quartermaster, and was intrusted with the charge of one of our mule trains, used for transportation of supplies. Mr. Grove was murdered by soldiers of the Republican army. The train that was the special charge of Mr. Grove was taken possession of by the military authorities, with its entire outfit and supplies, all of which were totally lost to the Abra Company. The mule trains owned and worked by the company at that time were three in number, aggregating about 150 mules. The train so taken was one of the three here mentioned.

"Mark, now, how plain a tale will put down" this army of perjurers. We have in the letter book a full account of the murder of Grove, written by Bartholow immediately after the event occurred. In his letter to Garth of March 7, 1866, he says (~~Ex. B, 247~~):

> In my last letter I informed you that one of my employees, Wm. Grove, esq., formerly of Saline Co., Mo., was missing, and I feared had been waylaid and murdered. Since then my worst fears have been realized, for, after a search of two weeks, his body was found buried in the sand on the bank of the Piastla River, some ten miles above the mouth of Candalaro Creek, near where he had been murdered.

At the time of the discovery of the body it was in such an advanced state of decomposition that it was impossible to ascertain the manner in which he had been killed. His mule, pistol, and clothing have not yet been found. The mule is, however, likely to turn up, as it had our hacienda brand "U. S." on the left shoulder. These facts were promptly laid before the commander of the Liberal troops at San Ignacio, Señor D. Jesus Vega, who took great interest in the matter and promised to use all the means in his power to discover the murderers and bring them to justice, and he has had arrested and placed in confinement two men charged with the crime, and his soldiers are in pursuit of the third. These, we are assured, will be tried by court-martial, and if found guilty will be summarily executed. Mr. Grove, I think, lost his life by imprudence in talking. He had resided in Mexico for six or seven years, spoke the language quite fluently, and ought to have understood the character of the people. I had nominally purchased a train of pack mules in Mr. Grove's name, and sent him to San Ignacio to obtain a permit for them to pack for me and a guarantee that they would not be taken by the army. He succeeded in getting these documents and was on his way home to take possession of the mules and start them to packing. He passed the night previous to his death at the house of one Meliton, at Techamate, the place where, you will recollect, we stopped for dinner on our first trip up, where we had quite a quantity of watermelons. This man Meliton had a bad reputation, was some years ago convicted of murder and robbery and sentenced to be executed, but got clear by bribery. Grove told this man of his purchase of the pack train, and that he was to pay $4,000 for it, and was on his way to take possession of it and start it to

work, thus leaving the impression that he had this sum of money with him. Now, whilst I do not think that Meliton committed the murder, I have no doubt of his having planned it and arranged for it to be done, and the imprudence of Mr. G. in telling this man the circumstances above mentioned, in my opinion, was the cause which led to his murder, which was effected between Techamate and Tenchuguilita, about midway between the two places.

In the next letter to Garth, April 10, Bartholow narrates the conclusion of the Grove affair in these words (Ex. B, 256):

P. 220

I wrote you fully in my last letter detailing the circumstances of the murder of William Grove and the finding of his body. Since then the Liberal authorities have taken the matter in hand and arrested one of the murderers at this place. The villain was actually in our employ, doubtless for the purpose of ascertaining when an opportunity should offer to waylay and murder another of our men if the prospect for plunder was sufficient to warrant the risk. When the officers arrested I had him conveyed to the blacksmith shop and securely ironed. The next day he was conveyed to San Ignacio and thence to Cosala, where he was tried. We failed to convict him for the murder of Grove, but was convicted for the murder of a woman, who he killed previously, and sentenced to be shot, and before the execution of the sentence he confessed the murder of Grove and revealed the names of his two confederates. These two would have been arrested before this but for the expulsion of the Liberals from the country. Now we will have to wait for the Imperialists to put their officers in power before we can act any further in the matter.

THE ROBBERY OF SCOTT.

Shortly after the murder of Grove the robbery of one of the employees of the company occurred, and that is also made the foundation of a charge against the Mexican authorities, and constitutes one of the alleged series of outrages and exactions which finally culminated in driving the company out of the country. Bartholow's account of it, as sworn to before the commission, was as follows (~~Ex. A, 477~~): P. 177

> One of the employees of the company, who had been sent to Mazatlan on business, was robbed by said military authorities near Camacho, in Sinaloa, while on his return from Mazatlan to the company's works, of eleven hundred and seventy-eight dollars of the moneys of the company, which amount never was repaid to the company, nor was the company ever indemnified for the same in any way. I recollect the exact amount taken, because I entered the same on the books of the company, charging the same to the "robbery account," where other "prestamos" and robberies were entered. The name of this employee who was so robbed of the company's money, was George Scott, commonly called "Scotty." This transaction was nothing less than highway robbery by said troops, and was in addition to the several "prestamos" levied and enforced by the military authorities, which, I have said, ranged from three to six hundred dollars.

Clark, among others, supports Bartholow before the Commission as to this robbery, but as his account differs somewhat in its details I quote his words (Ex. A, ~~309~~): P 63

> And deponent further says, that he knows of other abuses of said company by the military authorities

aforesaid; that in the early part of 1866 an employee of said company, whose name, deponent believes, was George Scott (called "Scottie"), who was on his way from Mazatlan to the works of the company in Durango, was met in the road by an armed party of the said military between Mazatlan and deponent's residence in Camacho, and said armed party of troops of the Republican army of Mexico did, by force of arms, take from said Scott, or "Scottie," about twelve hundred out of three thousand dollars in gold coin ($3,000), Mexican ounces [187½ ounces], which money belonged to said "La Abra Silver Mining Company," and was being transported by the said "Scottie," who appealed to deponent to visit with him the headquarters of the army in that district, and to ask General Guerra to return said money, or to receipt for it, in order that he might have *something* to return to said company; that deponent did so visit General Guerra's headquarters with the said "Scottie," but was informed by the commanding officer that he could not give up said money. After said Scottie had wasted two or three days to obtain some kind of acknowledgment of the taking of said money, he became disgusted and returned to report the facts to his company at Tayoltita.

A full account of this affair is also found in the letter book, and effectually puts a quietus on the charge of bad conduct on the part of the Mexican authorities. In his letter to Garth, of April 10, Bartholow writes (Ex. B, ~~255–6~~):

P. 219-220

> In consequence of the unsettled state of the country, and the presence of bands of robbers on and near the roads leading from here to the port, I have had a great deal of trouble to get money from

time to time transported to pay my hands and other expenses, and in consequence I was, of course, unwilling to risk any very large sum at one time; yet, when we were getting timber and doing other work which required a great many Mexican laborers, we frequently needed $1,000 per week, and of course all that the proceeds of the sales of goods did not supply had to be brought from Mazatlan, but I so managed it that we never had more than from $1,500 to $2,000 at risk at one time, and all came through safe except in one case. This occurred some two weeks ago, when I sent Mr. Scott to San Ignacio to settle our taxes with the authorities. I gave him a check on Messrs. Echeguran, Quintana & Co., for $1,000 to bring up. Besides this he had some money outside of this sum which was left after paying the taxes in San Ignacio. He got the money as directed and started out of Mazatlan to overtake a train which was bringing up some supplies for us and Mr. Rice, and when about twenty miles out from the port, near the town of Comacho, six or eight armed men sprang into the road, and with their guns leveled upon him forced him to dismount, and robbed him of $1,178 in money, his pantaloons, and boots (the latter, however, being No. 12, were too large for any of the villians, and were returned). He immediately informed the nearest commander of the Liberal forces of the fact, who sent for him for the purpose of identifying the robbers. He complied, but could not find them, for the reason that the officer could not find even half his men. I also, at the same time, opened a correspondence with General Corrona through the prefect, Col. Jesus Vega, at San Ignacio, who, by the way, is, I think, one of the most perfect gentlemen I have met in the country, and I am of the opinion that but for

> the turn in military affairs which occurred a few days since, we would in some way or other have been reimbursed for the loss, but now I have no hopes whatever, and we may as well charge up $1,178 to profit and loss.

FORCED LOANS OR PRESTAMOS.

In further support of the averment of hostility and persecution on the part of the Mexican authorities, testimony was introduced before the commission to show that forced loans or prestamos were levied upon and exacted from the company both during the superintendency of Bartholow and De Lagnel. Bartholow's deposition is full of vague and indefinite charges of hostility and persecution on the part of the Mexican authorities which, because of their indefinite character, it is hard to refute. As to the forced loans he deposes (Ex. A, 477):

> I was also compelled by the military authorities of the Republic, under the command of General Corona, to pay a number of "prestamos" or forced loans, levied upon said Abra Company's stamp mill, machinery, and supplies, from $300 to $600 each, one of which, for $600, was paid for me by William G. S. Clark, of Camacho.

In referring to the robbery of Scott, he says: "I recollect the exact amount taken, because I entered the same on the books of the company, charging the same to the 'robbery account,' where other 'prestamos' and robberies are entered." Clark, in his deposition, supports Bartholow (except as to time) as to the alleged $600 forced loan, but there is not the slightest reference anywhere either in the letter book or the account books of the

company, now in the possession of this court, to the payment of any forced loans during Bartholow's superintendency. Everyone who reads the letter book and notes the care with which Bartholow has written down every incident must be convinced that no such events as sworn to by him ever occurred. On the contrary, the letter book shows that all his appeals to the authorities were kindly received and were generally favorably acted upon. Let me tax the patience of your honors by reading one of these appeals in full (Ex. B, 251):

HACIENDA LA ABRA SILVER MINING CO.,
Tayoltita, March 17, 1866.

SEÑOR EL ADMINISTRADOR DE RENTAS,
San Ignacio.

DEAR SIR: The bearer of this, Mr. William Scott, goes to San Ignacio under my instructions to pay the taxes on the goods I have purchased to supply my miners and laborers, which goods have been received here, on which I am informed through several sources that you or some one else holding office under the Republic of Mexico have determined to force from me as a tax upon these goods a tariff of sixty-five per centum. I can not believe that any officer of this *Republic* can be induced to perpetrate such an outrage upon a *citizen* of the *United States*, the only *Government* on the globe which *recognizes this Republic* and is giving it moral and substantial aid in her present conflict with *Maximilian* and his *European allies*. If such a tax as this is imposed upon me I desire *General Corona* to send here an officer, empowered with written authority, to take of my effects sufficient to pay it, for I shall, if anything like this sum is demanded of me, put my goods

and property under the protection of the flag of the *United States*, and from under it I intend they shall be taken. At the same time I shall offer no other resistance to any *legal* officer of the Mexican Republic than to enter my solemn protest against it and appeal to my Government at Washington; and, besides, if this large tax is collected from me, I will be thereby compelled to close up all my business here, abandon my property, and return to the United States, for this course will save more money for my partners and myself than to continue operations here any longer under such enormous taxes. No business can stand such, neither in Mexico nor in any other country in the world. My partners and myself have purchased a hacienda and mines here, for which we paid *cash* $50,000.00; are now building machinery which will cost besides $65,000.00. This large amount of machinery will be completed and operating in four months if I am not compelled to stop work on it by these large taxes and restrictions; but, as before stated, if anything like such a tax as sixty-five per centum is imposed upon my merchandize, I had better at once abandon my work, pay off and discharge miners, mechanics, and laborers, and of these I have in my employ thirty Americans and one hundred and fifty Mexicans (these latter Mexicans are wholly dependent upon me for their daily food), and leave the country until a time shall come when Americans (citizens of the United States) can find that security and protection from the Republic of Mexico which they are entitled to receive, and which the *minister plenipotentiary of the Republic of Mexico at Washington* (the capital of the United States) assured my company, before we embarked in this enterprise, we should have.

Now, I am willing and anxious to pay any just and legal internal tax that the laws of the Republic require, but as I have already paid at Mazatlan the *import duties* upon my goods to the imperial authorities who occupy that port, there is no legal right or justice in the officers of the Republic occupying the interior in demanding of me the payment again. It is the misfortune of the Republic that it does not occupy the port of Mazatlan, and certainly it is not my fault.

If Mr. Scott can make an equitable and just settlement with you for the payment of a fair and legal tax he is fully empowered by me to do so; if, on the contrary, he can not, then he is instructed by me to take a copy of this letter, which I have given him for this purpose, to General Corona and make the payment direct to him.

Your ob't servant,

TH. J. BARTHOLOW,
Superintendent.

A copy of a letter to General Corona on the same subject follows, but it will be unnecessary to read it, as will be seen from the letter to Garth of April 10, giving the result of his appeal. He writes Garth as follows (Ex. B, 255):

To give you a better idea than I could do by detailing the transaction in this letter of one of the many difficulties I have to meet and overcome, I enclose you a letter that I wrote to the collector of taxes at San Ignacio, which explains itself. The result was, instead of paying taxes to amount of three or four thousand dollars, as was demanded, we only paid about $30, and there was no necessity of troubling Gen'l Corona with the matter.

The affidavit of Pedro Echeguren, a banker and merchant of Mazatlan, before the commission is also relied upon to support Bartholow's statement as to the payment of forced loans, but an examination of his testimony shows that he had no personal knowledge of the matter and derived all his information from Bartholow. His affidavit is, however, valuable as showing the state of the country at the time. (See Echeguren's testimony, Ex. A, p. 410–411.)

pp. 104–105

Mr. Avila, the Mexican agent before the commission, in his argument in this case, cites the testimony of Sr. Echeguren in the claim of Benj. H. Wyman, No. 911, as follows:

> That he knows and it was notorious that all the authorities respected the persons and properties of foreigners, and particularly of Americans, and he, being a foreigner, had never suffered in his property and interests other annoyances than those that are inevitable consequences of political disturbances and hazards of war, and no injuries whatsoever from international acts. (H. Ex. Doc. 103, p. 370.)

As we have said, the letter book and account book of La Abra Company fail to show that during Bartholow's management any forced loans were exacted from the company. But to anyone familiar with Spanish-American countries, so frequently disturbed by revolutionary movements, it would not seem strange nor any unusual hardship if a company situated as was La Abra should have been compelled to pay forced loans; and the fact that it was enabled to carry on its operations for more than two years in a locality subjected to unusual civil disturbances without having to pay any such character of taxation is

a testimony of the most conspicuous kind to the consideration with which this American company was treated by the authorities.

THE VALDESPINO FORCED LOAN.

This is especially apparent in the single instance of which we have any record when a demand was ever made on the company for a forced loan, in what is known as the Valdespino affair. This affair figured conspicuously before the commission and is one of the two instances in which the charges are sought to be supported by documentary evidence. Exall swears (~~Ex. A, 460~~) that—

> It is untrue that any part of it was paid by me, voluntarily or otherwise. I was not superintendent until September, 1866, and this loan was made in July, 1866, when Colonel De Lagnel was superintendent, as will be seen by the order addressed by said Valdespino to Colonel De Lagnel, and, to the best of my recollection, the whole amount, $1,200, was required of and paid by said De Lagnel. There was a small loan, or "prestamo," previously required by Valdespino, of, I think, $500, and that was paid by contribution, and with much trouble, the company paying the largest part of it, and I recollect that some show of trying to collect from Mexicans a part of said $1,200 loan was pretended to be made and failed, and Valdespino then fell back upon the company, as being most able to pay, and completed the payment.

James Granger, in his first affidavit for the company, swears as follows (~~Ex. A, 353~~):

> Said company was also forced to pay "prestamos." A letter was received by Colonel De Lagnel, super-

intendent of said company, from Colonel Valdespino, of the Republican army of Mexico, dated July 27, 1866, and signed "Jesus Valdespino," which came into my possession as clerk of the company, and which letter has never, since its receipt, passed out of my possession; and I now present the same to the consul, marked "Exhibit Z." This letter demands $1,200 from said company for the support of his forces under his command. It is needless to say the demand was complied with.

This affidavit was made May 14, 1870. At that time Granger had in his possession the letter book which showed that the forced loan was refused and not paid. A year later, when examined on behalf of the Mexican Government, he said he knew of the letter, but did not know whether the company paid the loan or not. But in both instances he swore falsely, for he did know that it had not been paid. The whole story is told in the correspondence now in the possession of this court. The commander of the troops, Valdespino, sent a letter to Colonel De Lagnel, accompanied by one from the gefe politico or prefect. Valdespino's letter is as follows (~~Ex. A, 360~~):

EXHIBIT Z.

SAN DIMAS, *July 27, 1866.*

To Colonel J. A. DE LAGNEL.

DEAR SIR: Both Mr. Laeuz and the gefe of the partido will inform you of the commission with which I am charged, by superior orders, and the powers vested in me to procure the necessary means for the maintenance of the forces under my command;

but, informed, as I fully am, of the injury which my continuance in the district would cause to its residents, and *particularly those having large business and property*, in the maintenance of my force, I have resolved to leave immediately, as I think that it will be for the interest of your business, and upon the sole condition that the residents of the district furnish me with $1,200 for my departure. I am confident that I take this step as the least burdensome, because if I remain here I must obtain means *wherever they may be found*, but as I have before stated, my purpose is to the individual guarantees which the laws accord to the people.

I hope that you will attentively weigh my reasons, and, convinced of their soundness, you will contribute your share toward completing the contribution levied by the gefetura of the partido on your place.

I avail myself of the opportunity of offering myself as your friend and obedient servant,

JESUS VALDESPINO.

De Lagnel sent a reply to both the prefect and Valdespino. The letter to the prefect I give in full (Ex. B, 272):

[Translation.]

HACIENDA OF LA ABRA, *July 28, 1866.*

To the Gefe Politico of the San Dimas mines:

In due time reached me your communication of yesterday in regard to a loan or tax which you exact from the residents of the district for the support of the forces of Colonel Valdespino, and having noticed the contents thereof I answer it forthwith.

I send you part of the articles I have and which you ask me for, hoping that they be useful and acceptable to you.

As regards the cash, I am sorry to inform you that it is impossible for me to send you even a little, because I have not here the necessary amount to defray my many and constant expenses.

I request you to consider that this hacienda has brought the country thousands and thousands of dollars, most of which have been spent among the needy people of this district, and a considerable part in duties paid into the treasury of the district, under whose flag Col. Valdespino is serving. As it is public and well known, not a single dollar have we received of this sum up to date. I send you two pieces of blue mahon and two pieces of bleached cotton, valued at sixty-five dollars and seventy-five cents, of which amount be pleased to send me the corresponding receipt, in order that it may serve me as a voucher to the company I have the honor to represent.

In conclusion permit me to add that it is very strange to me that the total amount of the tax being $1,200, the share allotted to the two American companies should amount to half that sum, when there are in the district several residents who have considerable property.

I am, sir, your sincere servant,

J. A. DE LAGNEL.

The letter of De Lagnel to Valdespino covers the same ground. I make the following extract:

I am not, therefore, in a condition to accede, as you desire, to the wishes of the political chief, but have sent him what I have, hoping that they be accepted as a token of my good will.

I suppose that having contributed with what I can I may, as a matter of course, resume my work

without fearing the interruption that would be caused by the arrival of armed forces.

I am, sir, your attentive and sincere serv't,

J. A. DE LAGNEL.

In a letter to Rice, superintendent of the American Company at San Dimas, De Lagnel writes on July 31 (~~Ex. B, 273~~): P. 237

> As to the forced, voluntary (?) loan, it was an impossibility to meet the demand, and I so stated in my note to the prefect.
>
> You can not have failed to notice that the exact half of the whole levy was laid upon you and myself, a fact I brought to the attention of the parties interested.

The event does not appear to be of sufficient importance to be mentioned by De Lagnel in his next letter to Garth, but he deposes before this court as to the incident as follows (~~Compl. Ev., 28~~): P. 488

> Q. There is a letter in the press copy book concerning what is called a prestemo or forced loan, levied in Tayoltita by Colonel Valdispeno during your superintendency. State the circumstances of that, as far as you know.
>
> A. I received from the civil officer in San Dimas, and also at the same time from Colonel Valdispeno, letters, both bearing on the same subject. He had come into the vicinity with a command of cavalry—Liberal cavalry—destitute. The mules were broken down by coming over the mountains. They wanted food and clothing and money, and they wrote to me, saying that they had apportioned it on the two mining companies, the one at San Dimas and the one with which I was connected, levying one quarter upon us, and the other half was to be borne by the

citizens. I was advised to comply. They wanted $300, if I recollect right, in money. I didn't have the money to give them, and didn't intend to give it even if I had it. I was advised to do so, or they would come there and rob the place, as it was said to be the habit.

Q. By whom were you advised?

A. I was advised by a man named Norton, who had married a Mexican wife.

Q. The same man who was your clerk?

A. Exactly. He had been in the Liberal service. He said to me, "It will be to your interest to do it; they will sack this place if you don't." I said, "I am not going to do it, for the good reason that I haven't got the money in the first place, and if I had, I wouldn't do it."

Q. What was the result?

A. I sent them a few goods—some stuff they wanted, blankets and hats. I sent them some goods, cotton goods, and wrote a courteous note to each one of them, expressing regret that I could not comply with their wishes, and stating that we had no money, because the mines had never turned out a dollar. They wrote me an acknowledgment and sent a receipt for the goods and courteous acknowledgments. That was the end of it.

Notwithstanding these plain facts, respondent's counsel in his brief dwells at considerable length upon this affair and would have your honors believe you should take it into serious consideration in deciding whether there were just grounds for the claimants' allegation of forcible interruption of and expulsion from their works. In his brief he says (Resp. Brief, 81):

> Judge Black, in his argument before the umpire, said of Valdespino's letter: "The glove was soft,

though the hand within was of iron. It was a very polite request by an officer who had a regiment of soldiers behind him."

Judge Black had before him the one letter of Valdespino which Granger had produced, and he made the most of it before the umpire. If the judge could have looked into the letter book then in Granger's possession, Mr. Kennedy would hardly have had the opportunity to quote him to-day, because the subject would never have been pressed upon the attention of the umpire.

THE MORA-SOTO ORDERS.

The next fact or incident in the history of the company which is presented in the claimants' testimony before the commission with sufficient definiteness to be properly examined is the alleged interference of the local authorities with the working of the mines by the company. This incident imperfectly and fraudulently presented to the commission by the claimants in their testimony probably had greater weight in procuring the award of the umpire than any other fact; and it is still insisted upon by respondent's counsel as an important element in the present suit. It is therefore necessary to examine the matter with some care. To establish the charge of interference of the authorities, four letters or orders of the Mexican officials, Mora and Soto, were introduced, being, with the exception of the Valdespino letter, the only original documentary evidence presented by the claimant to the commission. These orders were introduced as evidence in connection with the deposition of James

Granger taken at Mazatlan, May 14, 1870, and they appear in full in Exhibit A, ~~360~~. He swears (~~Ex. A, 355~~) that Exhibits V, W, and X are original papers; he identifies the body and signatures as in the handwriting, respectively, of Marcos Mora and Guadaloupe Soto, and says that he himself received them, and after showing them to Mr. Exall, filed them away, and subsequently turned them over to the attorney of said La Abra Company (Adams). As to Exhibit Y, he swears:

> It is a copy of an original order issued by said gefe politico, Marcus Mora, and received by Judge Guadaloupe Soto on the 3d day of June, 1867, and by him exhibited to said superintendent, Exall, and myself, and this copy, by request, we were allowed to take from the original. This copy is in the handwriting of Diego Flores, then in the employ of said La Abra Company, at Tayoltita.

It thus appears that the three original papers, dated, respectively, July 4, 5, and 10, 1867, are original documents, and that the one dated June 3, 1867, is a copy. Out of this fact there arose in the commission a misapprehension as to the dates, which has been perpetuated up to the date of the argument on demurrer in this court, Mr. Lines having adopted Mr. Kennedy's change of dates of the three original papers—a manifest error. It grew out of the fact that Exhibit V was a reply to Exhibit Y, which latter is dated June 3, and for that reason the date of the original was changed to June 4, which necessitated a like change in W—a change which was altogether inadmissible and illogical. If a discrepancy existed, as was manifest, it is natural to suppose it was

caused by Granger and Flores in making the copy. That such is the fact is strongly confirmed by the letter book. It contains a letter from Exall, dated July 11, in reply to the letter (X) of Mora of July 10, and in Exall's letter to Garth of July 13 we have statements which undoubtedly refer to the occurrences which gave rise to the orders in question. (Ex. B, 306–7.) He writes:

> The letters and papers sent by Sr. Molina were received at the hacienda on the 1st of the month. I had been advised by one of the members of the house of E., P. & Co. of the movements of Sr. M., of his meeting with you, etc. * * * (307). When I received your letter by Sr. M. I was working the Abra, Cristo, Luz, and Arryan—a small force in each. Seeing the decided manner in which all further aid for the present was refused and the injunction to cut down all expenses, necessitated my stopping off the whole force from the mines. As I had only a short time previous reduced the cash payment from one-third to ——— (which occasioned a stop of eight or ten days, which I was glad of, as it was so much clear gain, and a little spat with the officials, which was gotten through without much trouble), I thought it best not to stop off immediately, but prepare the miners for the change. * * * We can do better with them when they are a little hungry * * * (308). The officials are getting daily more troublesome; their demands are all foolish and very unjust, but we have to do the best we can with them and take things as quietly as possible.

These extracts unmistakably constitute the report of Exall to the New York office of the outbreak of the miners, of the interference of the local officials in their

effort to protect them against the extortion and bad treatment of the company, and of the manner in which the whole affair was settled. There was a great conflict of testimony before the commission as to this occurrence, and it would be a waste of time to attempt to sift the truth out of the mass of false swearing. But your honors have in these orders of the officials and the letter book of the company records of the occurrence written down at the time, and they make it very clear what the officials had in view and how the matter was adjusted. Exall, in his note of July 11 to the prefect of San Dimas (~~Ex. B, 303~~), shows that he regarded the fault as attaching to the company, and that a "most friendly understanding" had been reached. And in his report to Garth he could only characterize it as "a little spat with the officials, which was gotten through without much trouble;" and even when he manifests impatience with the interference of the officials, he terms their demands "all foolish and very unjust." This is not the language of a man who regarded his life or the property of his company in peril. Granger's bad faith in introducing the orders of Mora and Soto was in concealing the existence of Exall's reply to Exhibit X and the report to the New York office, which are contained in the letter book, then in his possession.

P. 267

Mr. Kennedy claims in his brief that this affair took place early in June, and that Exall must have made a report of it to Garth while he was at Mazatlan, the copy of which does not appear in the letter book. It seems that he did write a letter from Mazatlan, but there is no

evidence to show that a copy of it was placed in the letter book. While, however, there is no copy of it, we know what it contained by reference to Garth's letter of August 10, acknowledging its receipt. It is evident from Garth's letter that there was no reference in Exall's letter of June 11 to any serious difficulties with the authorities and that it did not contain an account of the occurrences attending the Mora-Soto orders.

The cause of the outbreak of the miners and these orders is made manifest in the letter book. As your honors remember, the company had established a store at the mines, out of which they expected to derive large profits. In Bartholow's second letter to Garth, March 7, 1866, he writes (~~Ex. B, 247~~):

> Our sales range from $80 to $100 per day cash, besides what we sell to our employees, which is charged on the books. The store under good management will, I think, yield a net profit of $20,000 per annum, but it requires close and constant attention, for the reason that these people buy everything of general consumption in very small quantities, usually from 3 cents to 6¼ cents at a time. I have seen women stand at the counter and make three purchases of cheese of 3 cents each; they do this under the impression that they get more in the aggregate by buying in such small quantities, yet when they come to purchase a dress, a rebozo, or shawl they will cheerfully pay the highest price if they have the money, and rarely complain of the prices asked. Our staple goods and provisions yield a profit of at least 50 per cent, and fancy dry goods from 60 to 100 per cent, and the most difficult task I have now is to keep an ample supply on hand to meet the demand.

In his last letter to Garth (April 10) Bartholow writes in very enthusiastic terms about the store (~~Ex. B, 256~~):

> Our store is doing an excellent business. Our goods and supplies pay liberal profits, and I am confident when our mill and buildings are completed and our mining and mill-work systematized as it should be, the store if kept well supplied will run the entire concern, thus reducing the cost of our labor about fifty per cent.

There are frequent references all through the letter book to the store, and it is seen that the visits of the superintendent to Mazatlan were in great measure occasioned by the necessity of purchasing supplies for the store. In De Lagnel's first letter to Garth (July 6, 1866) he says (~~Ex. B, 270~~): "The payments made formerly to workmen and others in cash are now made in cash and goods, one part of the former and two of the latter." In his next letter to Garth (August 16) he says (~~Ex. B, 275~~): "When I arrived at Tayoltita the payments were made mostly in cash. After the first month I reduced it to one-half, and the next to one-third cash, and rest in goods." And again, evidently in response to an inquiry as to why the sales at the store were not greater, he writes to Garth, January 5, 1867 (~~Ex. B, 293~~):

> As those employed by me receive two-thirds of their earnings in goods, they have no great need to purchase more. Then there are other points within striking distance which are endeavoring to attract the little trade there is, and so, between a diversity of causes, the receipts of cash are very small indeed.

These extracts from the company's own records throw much light upon the Mora-Soto orders. The letter of

Exall which I have already quoted shows that about July 1 he had discontinued the one-third cash payment, and that this caused a stoppage at the works and the "little spat with the officials." It is plain that the uprising or strike of the miners was occasioned by this action of the company, and the interference of the authorities was with a view to restoring order, and the only effective and just settlement was that which the authorities sought to bring about. It is interesting to note in this connection that the only indication of trouble which De Lagnel had with the workmen during his superintendency arose out of a somewhat similar cause. It is told in his testimony before this court (Compl. Ev., 53):

> By Mr. KENNEDY:
>
> 217. Q. What was the occasion or pretext of the armed demonstration that you described before the Senate committee?
>
> A. It was because the port of Mazatlan was beleaguered by the Liberals; the French and Imperialists had possession, and General Corona or his subordinate would permit no passage to or from the city. There was no ready money at the mines, and I could not get to Mazatlan to get the money, and I wanted to pay these people in orders—promissory notes, so to speak—for a time, until that embargo should be removed. If I could have got to the port or city of Mazatlan there would have been no trouble, because I could have got the money, as it was in the hands of the bank there.

This statement from De Lagnel and the Mora-Soto incident, of which so much has been made, show that so long as the company complied with its engagements with

its employees everything went smoothly at the mines, and that when it failed in its engagement with them there was trouble—in other words, that the same condition of things existed between the employer and employee in that remote region of Mexico as in the most civilized regions of the world.

THE IMPRISONMENT OF EXALL.

The next event which was brought to the attention of the commission to prove the averments in the memorial, as to the hostility and persecution of the company, which compelled the abandonment of the mines, was the arrest and imprisonment of the superintendent, Exall. His own testimony on this point was as follows (~~Ex. A,~~ 337):

> The civil officers of the legitimate Government of Mexico under President Juarez also harassed and annoyed us, and interfered with the continuing of the mining operations of said company. I was arrested by the order of the local magistrate or judge of Tayoltita, whose official title, as I understood, was "Juez," and thrust into prison and sentenced by him to a fine of $50 and imprisonment for two months. I had no trial, nor even an examination, except by him personally, and do not know for what I was arrested or imprisoned; but I here state positively that I had not committed any act, crime, or offense against the laws or people of Mexico, or any citizen or soldier of the same, nor against any of the authorities, local or national. I was released through the personal influence of a Mr. Granger, who had to promise payment of the said fine, no good reason ever having been given me for my arrest or release.

In his second deposition, in rebuttal, he said (~~Ex. A, 461~~):

> 18. Q. State whether or not your arrest by Judge Perez was in consequence of any misdemeanor committed by you?
>
> A. It was not; I had done no unlawful act, and none was charged against me. I told Judge Perez, politely, that if he had some business with me that I would see him in the office, and his pretended offense was all previously arranged, as I was subsequently informed, to give him a pretext for locking me up and paralyzing the works of the company. I gave him no reason or cause for arresting me.

Garth, in his deposition in this suit (~~Resp. Ev., 57~~), said Exall, on his return to New York from Mexico in 1868, told him "he was imprisoned for about two weeks." Granger, in his first deposition, taken by claimant for use of the commission, entered into a detailed statement. (See Granger's testimony, ~~Ex. A, p. 354.~~)

Granger was afterwards examined by Mexico, but the only material qualification of his former testimony was that Exall was imprisoned "at a place called Raventon, situated in the same district of Tayoltita." Another witness, whose affidavit was filed to support the charge of Exall's imprisonment, is John P. Cryder, who follows Granger's narrative in most respects, but adds to it some embellishments not given by Granger. (Ex. A, ~~374–5.~~)

Mexico introduced some evidence before the commission tending to disprove the affidavits of La Abra witnesses, but I do not deem it necessary to restate it, for the reason that Exall himself has given us a full account

of the affair, written down at the time and placed in the letter book. I refer to his letter to the prefect of San Dimas:

C. Jefe Político,
San Dimas, Durango.

Dear Sir: This morning about 11 o'c'k Sr. D. Gicanor Perez came into the store belonging to the hacienda, looked around, saluted us, and then walked into the storeroom adjoining the store, the time I was behind the counter, and seeing him in there where *no one* was ever allowed without permission, I, in as polite Spanish as I was master of, requested him to come out, and after he came out I shut the storeroom door. He then asked me if I thought he was a rogue and wanted to steal. I told him as well as I could, certainly not, and that the reason of my asking him out was that no one was ever allowed in there without permission. He then stated that he was there on official business, and wanted to see Matias (our ——), who was at the time working in the storeroom. I immediately called Matias out, and he and the ——— then went outside of the store. A few minutes afterwards he returned and talked in a very excited manner, feeling himself much insulted. I told him nothing was meant by what I had said, and he left and returned to ———.

At about 12¼ o'ck, just as our dinner bell had rung, a mozo brought an order from the judge, which I inclose. After we had eaten, Mr. Slone went up to see the judge. He had collected around his house a number of men, and in the house preparations had been made as if resistance was expected and force might be required. After getting into his room I requested Mr. Slone to ask him, as I was unable to ask him myself, what was the business he

wanted to see me on. He replied he had been grossly insulted and pushed out of the store when he was on official business. This I, of course, denied in a most emphatic manner, having acted only as before stated. I then told him that in requesting him to come out of the storeroom I had no intention of insulting him or hurting his feelings, but was simply enforcing the rules of the hacienda in not permitting anyone to go in the storeroom without permission. This he would not listen to, and persisted in saying I intended to insult him. I of course did not, from my ignorance of the language *could* not, argue the point. After some time spent in talking to this effect I asked him if he had gotten through with me, as I desired to return to the hacienda. He replied, yes, he had finished. Mr. Slone and I then left, and bid him good-by. As we reached the corridor he said he never wanted to see me in his house, except on official business. To this I replied, "Very well, sir," and turned to leave. He called me back, saying not to go; if I did he would send a force after me, and they would shoot, and insisted on my return into the house. I did so, without any remark. He then said I was his prisoner. I then requested him to know what was to be done. He said he would put me in jail until he could receive instructions from San Dimas. I remained passive, and he then gave full license to his tongue, abusing me in the most violent language. Then and several times I repeated my statement of the occurrence in the store. To this he paid no attention, and treated me with utter contempt, and persisted in his intention of putting me in jail until he could hear from S'n Dimas, and would listen to nothing that I might say. After being his prisoner for an hour, not being allowed to speak to anyone,

and being guarded, I asked him if he intended putting me in jail please to do so, as I had a headache and wished to lie down. He then gave me permission to go to the hacienda, *but* to consider myself still his prisoner, and ——— at his house whenever ordered.

My dear sir, I have before given you as minute a state of events exactly as they occurred as 'tis possible to write, and from which you will see that if I have given any cause to Dn. Nicanor to imagine himself insulted, it was done ignorantly, as nothing was further from my thoughts than insulting him or hurting his feelings in any manner, and I submit it to your judgment whether I deserve the treatment which I have been subjected to, abused and insulted, without any provocation, and have no redress left me. But for being a prisoner I would come and see you in reference to the matter, but unfortunately necessity compels me to write.

Dn. Nicanor intends writing to San Dimas, and will of course give his version of the affair. Please act on this immediately, as I don't care to be any longer under restraint than possible.

Yours, most respectfully,

CHARLES H. EXALL,
Adm'r La S. M. Co.

TAYOLTITA, *Jan'y 7, 1868.*

My learned friend, Mr. Kennedy, contends that this letter was written before the real imprisonment began, which he alleges was the next day, the 8th of January, and that the imprisonment lasted till the 11th, supporting his contention by the witnesses above cited, by a letter found on page ~~315 of the letter book,~~ and by the deposition of Mr. Sundell. But Sundell testified that

Exall told him his imprisonment lasted only "a few hours" (~~Compl. Ev., 67~~), and if any reliance is to be placed on his testimony the imprisonment could not have lasted till the 11th. The letter of Larenga (~~Ex. B, 315-6~~), because it bears date at San Dimas, January 12, would indicate that Exall was at San Dimas on that day, but it can not be concluded therefrom that he was not there between the 7th and 12th. There is, in addition to the letter to the prefect of the 7th, another strong indication that the imprisonment did not extend beyond the 7th. We have seen that Exall, in his deposition, says (Ex. A, ~~337~~): "I was released through the personal influence of a Mr. Granger, who had to promise payment of said fine." And Granger swore (~~Ex. A, 354~~): "By personal influences I brought to bear, and by securing the payment of the fine imposed upon him, I managed to get Mr. Exall released." Cryder says (Ex. A, ~~375~~): "Mr. Granger managed, with some influences unknown to me, and by securing the payment of the fine, to get Mr. Exall released." If these witnesses for claimants are to be believed, and respondent at least must accept their statements, the payment of the fine either accompanied or followed the release. The expense account of the company introduced by respondent (~~Resp. Ev., 94~~) shows that the sum of $50 was paid out on the 8th. It is entered on the book as "prestamo," which, respondent's counsel claims, was the fine imposed on Exall.

The position in the letter book of the letter to the prefect is to me a conclusive proof that with the events therein narrated the entire incident was closed. It follows the letter dated from San Dimas on the 12th, and

is itself immediately followed by a letter to Garth dated January 24. If it were true, as affirmed by claimants' witnesses, that he was shut up for days thereafter in a loathsome prison and treated with the barbarity alleged, it is incomprehensible that Exall would have allowed that narrative to stand in the letter book uncontradicted or without a note of explanation. It is, also, incredible that he would have omitted any reference to the event in his letter to Garth the same month, if the imprisonment was of the grave character given to it before the commission. It is not claimed that any steps were taken by Exall after his release by way of redress. Green, one of the claimants' witnesses, had himself a case before the commission, complaining of false imprisonment in San Dimas (No. 776), and, in rejecting his claim, the umpire said (H. Ex. Doc. 103, p. 105):

> If the judge illegally imprisoned the claimant, it was certainly in his power to appeal to a higher court, and to sue Judge Perez for false imprisonment. * * * Nothing could have been more easy for him than to seek his remedy through the courts; but it does not appear that he took any step in that direction.

GENERAL CHARGES OF HOSTILITY.

It was further sought to sustain the averments in the memorial, respecting the hostility and persecution of the company resulting in the abandonment of the property, by a number of vague and general statements of witnesses before the commission as to unfriendly declarations of Mexican officials, as to the refusal of the authorities to grant protection from outrages and redress

of grievances when applied for, and as to the failure to carry into effect the proclamations and invitations of the Mexican Government assuring foreigners investing their capital in the country of full protection. The testimony as to the unfriendly declarations of the officials is almost entirely of a hearsay character, in many instances is denied by the officials themselves, and proof of its falsity was introduced before the commission. The alleged refusal of the authorities to grant protection and redress is not sustained by a single document or other official proof. No copy of any proclamation or invitation to foreigners of the character alleged by claimants' witnesses was ever presented to the commission, and the Mexican agent before that body denied that any such document was ever published. But whatever may have been the weight of evidence before the commission on these points, this court is now in possession of proof which makes it clear that the charges preferred before the commission were false and unfounded.

The letter book alone is sufficiently convincing. I have already called attention to the account of affairs at the mines as given in Bartholow's letters, showing that in every instance, when requested, the authorities extended to him all possible protection. I need only recall the sentences in his letter to Garth of February 6, 1866 (Ex. B, 240): "Had I not succeeded in getting military protection our mill would now be lying at Mazatlan." I give one other extract not before cited. In a letter to Del Valle, March 13, 1866, he says (Ex. B, 249):

> All my machinery * * * has been received, as well as all the goods I purchased in Mazatlan.

> Considering that these effects weighed over 80 tons, and all packed up, through a country in a state of war, in less than three months, is quite good evidence of industry and energy.

It is as well an evidence of unusual protection on the part of the authorities.

During De Lagnel's superintendence there are frequent references in the letter book to the state of war then raging, with note of military and civil protection, and not a single record of official hostility. But De Lagnel, who was not called by the claimant to testify before the commission, is still living and has been examined at length in this suit. His deposition makes clear the state of affairs at the mines as to these matters. From this
P. 488 I make the following extract (~~Compl. Ev., 28~~):

> A. When I went outside I went with a party of Americans who had already established in the country, and they introduced me to the Liberals I came in contact with, and the fact that I was an American and engaged with this company satisfied all inquiries.
>
> Q. Now, did you require passes from the commandant of the Liberal forces?
>
> A. No, sir. General Bartholow had made a good impression on General Corona, who was supreme then. He had established relations with him, and they never interfered with me, save on one occasion, when they were besieging the port closely and had their lines drawn around the city. I wanted to go into a banking house to get money. I had been eight or nine days on the road, but they would not let me in. I rode to General Corona's headquarters and made an appeal to him, and he received me

well, but said it was imperative that no one should go in—that he would not let his own mother in.

Q. Did you know the Liberal officers?

A. One or two; never well; always met them kindly on the road.

Q. How did they treat you and your company?

A. Always well.

Exall's record on this subject in the letter book is in exact line with that of De Lagnel. Besides what I have already quoted from his letters, there is not a single reference showing a state of hostility on the part of the authorities. His frequent applications for prorogues were always promptly granted. The only appeal which was ever made to the courts was the suit against Soto for possession of the Guadalupe hacienda (Ex. B, 314), and the claimants' own witnesses testify it was decided in favor of the company. (~~Ex. A, 351~~ Bissell, ~~356~~ Granger.) Months after the Mora-Soto orders, to which so much importance is attached in respondent's brief, Exall writes (October 6, 1867) to Garth (~~Ex. B, 311~~): "There is no difficulty about authorities, boundaries, or anything else concerning the mines and hacienda, provided there is money in hand, and *money must be sent*."

On this subject there is an interesting piece of testimony in De Lagnel's deposition, which I will read:

200. Q. Do you know what the authorities were to whom you would have appealed in case the trouble you thought threatening had happened?

A. I can not say, and would only have known by advice. As a rule I relied upon myself for my protection, and for any further steps would have had to ask for advice.

201. Q. Did there seem to be any government of any sort prevailing there?

A. It was a wild mountain hamlet, on the mountain side, and we saw no authority—saw no exhibition of authority—from one year's end to the other.

202. Q. This man Soto, you say, was a justice of the peace?

A. I suppose he acted as the emergency arose. While I don't think he was kindly disposed to me he never harmed me in any way, except I thought (it was mere surmise) that he might have thought he would do better if he could have his own way, and have the money paid out in coin and come over his counter.

203. Q. You say that your mines were in the jurisdiction of San Dimas?

A. I think so. I don't know that the mines were in its jurisdiction, but there was a sort of authority, because when they spoke of anything like exercising authority they would refer to San Dimas. How far the authority went I don't know. I was never called upon to investigate it and never did.

This doubtless gives a true picture of the situation—"a wild mountain hamlet—no exhibition of authority from one year's end to another—as a rule I relied upon myself for protection." A state of war and its usual concomitant, a paralyzation of the civil authorities—"*inter arma silent leges.*" The letter book and contemporary history show that during the whole period of the occupancy of the mines by La Abra Company the country was in a state of war and civil commotion; that very locality and the seaport Mazatlan changed hands between the contending armies several times; when Exall was having that disappointing run of the mill, Maximilian

was making his last heroic stand at Queretaro; when Mora and Soto were exercising their feeble authority to induce the company to do justice to the starving workmen, Juarez, the legitimate president of Mexico, had not yet been able to occupy the capital of the country; and when Exall, hopeless of financial aid from New York, disappointed as to the ores, and disgusted with his experience, voluntarily took up his long journey to New York "to inquire into the intentions of the company," the local government for the first time in the history of the company was being put in a condition to administer affairs in due order and with efficiency.

Your honors, in your judicial capacity, have had occasion to look into claims arising out of a state of war. Let me present a case for your examination and decision. In the midst of our late civil war a company of London capitalists, listening to the story of some shrewd Yankee miner of rich veins of gold or silver ore in the mountain region on the borders of Carolina and Tennessee, embarked in a large mining venture in that locality. They were successful in running the blockade, and after great difficulties overcome succeeded in getting their works in operation; but during this time were harassed or interrupted in their work by the armed bands of one or the other warring faction; did not receive from the alternating civil authorities of Carolina or Tennessee, Confederate or Union, the full consideration and protection to which the subjects of a friendly nation were entitled in a well-ordered government; and finally, having spent all their capital and exhausted their credit, and

being unable to get enough silver out of the ores extracted to even pay mining expenses, they appear in this forum through their attorney and ask heavy damages against the United States, because of the harassment and interruption of their work during the late civil war, alleging the hostility or unfriendliness of the local authorities. What consideration would your honors give to such a claim?

Before passing from this subject I desire to notice an extraneous matter introduced in respondent's brief and twice cited (pp. 87 and 105) with some degree of satisfaction. I refer to a letter written by me in 1878 when minister to Mexico, in which I complain of the repeated murder of Americans, and state that so far as informed punishment had "followed in but a single case, and that when a Mexican was murdered at the same time," and wherein I refer to the sensitiveness of property to protection compared with human life. I do not feel called upon to retract or qualify anything in that letter, but I direct attention to the fact that it was written ten years after La Abra Company had passed out of existence and eleven years after the regularly constituted authorities had been restored to power in Mexico. It was written, however, before the massacre of Chinese at Rocks Springs and the lynching of Italians in New Orleans and Colorado, without any punishment by our courts. Possibly if I had been possessed of the experience of my own country in these latter days of advanced civilization I would have tempered my zeal as an American representative. However that may be, I never allowed myself to

become the champion of fraud and perjury, or to arraign the Government to which I was accredited for the murder of an American brought about by his own indiscretion and for which the authorities were in nowise responsible.

THE VALUE OF THE ORES.

The remaining averment of the memorial as to the hostile acts of the authorities to be examined is the alleged forced abandonment of the mines, which is fixed in complainants' testimony on or about March 20, 1868. But before taking this up I desire to examine the averments as to the ores of the company, which are presented in a variety of aspects. The memorial states that the "mines were of extraordinary richness;" that "they were getting out of said mines a large amount of the richest ore, and were in the act of realizing the extraordinary profit of a million dollars per annum;" that "they were compelled to abandon over a thousand tons of ore;" that "large quantities of ore * * * were taken from the company;" that "said mines were of immense richness;" that the "1,000 tons of silver ore already extracted, ~~with~~ $500,000 * * * were carried off by the Mexicans;" and "that at the time of the abandonment of said mines the company were extracting large quantities of ore, their profits would have been very great," and they "estimate their clear annual profits * * * at $1,000,000."

These averments were supported by the affidavits of a number of witnesses, and likewise denied by a number of other witnesses before the commission. The umpire

gave the company an award on this branch of the claim for $100,000. It is not my intention to test your patience by a review of the conflicting testimony before the commission, and I shall confine myself to the newly discovered evidence, to be passed upon judicially for the first time by this court, which consists of the records of the company itself, records which were, in the main, in the hands of the company in New York at the time the claim was brought, and the absence of which before the commission on this point so surprised the umpire. He said (H. Ex. Doc. 103, Forty-eighth Congress, first session, 75):

> In so well-regulated a business, as the umpire believes it really was, he can not doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down and that periodical reports would have been made to the company at New York. Neither books nor reports have been produced, nor has any reason been given for their nonproduction.

The letters of the three superintendents, which I am about to cite, were undoubtedly in the possession of the New York office; the reports of two or more assays of the ores, the statements of the run of the mill, the reports as to the ores taken from the mines, and various other data throwing light on this branch of the company's operations were in New York when the claim was filed. Bartholow, in his letter to Garth of March 7, 1866, makes reference to the ores (~~Ex. B, 246~~), which I have already quoted. He alludes to the subject again in his letter of April 10 (~~Ex. B, 257~~), giving a statement of the amount extracted and the cost. As I have shown from the

extracts heretofore read to the court, Bartholow had high hopes as to the value of the ore, but he was engaged in getting the mill up from Mazatlan and putting it up, and no ores were reduced till the year after his departure, so that he was not in a position to give the New York office any reliable information as to the value of the ore. But his successor, De Lagnel, furnished the company with valuable information. Soon after he arrived at the mines he made an assay of the ores and sent it in a letter to Garth, but as a copy of that letter is not in the letter book, we can only ascertain something of its results from De Lagnel's testimony. In his deposition he says (Compl. Ev., 24, 26):

P 484, 486

Q. And from these assays I understand you to say it appeared that the value of the ores was diminishing up to the time you left the property?

A. The first of those assays was made very soon after I went there—soon after General Bartholow left—and that assay was very satisfactory, so as to give us high hopes. The final assay was after we had commenced working the mill. There were two different ores. The first assay was all from La Luz mine, and that gave very satisfactory results, but I am not able to tell you what they were. That letter book probably would tell you, for I must have written to Mr. Garth about it. Then another interval ensued, and I made no assay until we got the mill to working and in use. We got the average; we didn't get the result of one little valuable piece, but we got the general average of the run—10 tons, 20 tons—and that assay, while it was satisfactory, still it was nothing comparable with the other.

(P. 26:) Q. What was the result of the reduction made by you?

P 484 6

A. That was not as satisfactory as the first one.

Q. No; I am not speaking of the assays, but of the reduction—the net result of the reduction of the ore. I mean the proceeds—what came out of the ore reduced by you?

A. The proceeds of that only run that I had anything to do with—the first run of the new mill—was a plate of silver, which was sent to New York. I can not tell you what it was worth, for I don't know; I have no idea; the value is stated in the printed affidavits; it is in Mr. Garth's statement.

* * * * *

Q. Do you remember about how it compared with the first assay?

A. It was vastly less. The first assay was such as to elate me. I went back perfectly satisfied.

As to the first of these assays, we have a reference in the letter book which explains itself (~~Ex. B, 287~~): P. 251

> As to the circumstance mentioned in your letter that certain parties had stated that the specimen ore had been "salted" for my especial benefit and deception, I can only refer you to the mention made of it in one of my letters—I forget which—but that it was done *purposely* is more than I am prepared to say.
>
> If I understand the term as used by miners, the facts are not as stated. It is, however, true that, though I requested to have the second-class ore of the Luz mine crushed for assay, specimens were taken from the first-class pile and prepared for my use, but I can not say that it was designedly done.

I have examined De Lagnel's letters to Garth with some care, and I have extracted all references which

throw any direct light upon the value of the ores. (Ex. B, 274–5.) Letter of August 16, 1866:

> The ore on hand has been overstated, unintentionally, a fact which I found out on making an examination of the books.
>
> I have had the large pile of second-class ore, about which much doubt had arisen, cleaned, and the amount of clean from the rock, as declared to be the expert Limpiador, is very small.
>
> The ore cleaned from it, however, is very good, and the other pile of first-class metal is not only better in quality, but, in as far as has yet been made manifest, but little waste metal.
>
> Besides these there is a third pile of almost equal amount to either of the others from the El Cristo.
>
> The result from La Luz not corresponding with the outlay, I reduced the force there, working in one place where the metal justified, and also a crosscut to strike the true vein, which has been left to the right.

Letter of September 7, 1866 (Ex. B, 280):

> In reference to the mines, I have to inform you that we are working in the La Luz, El Cristo, and the Arrallon with the same force as before. The first of these mines has not so far answered expectations, it yielding but comparatively little paying ore, requiring great labor and expense to get it out. The better vein in the Cancero or Crosscut was reached in my absence and promises well. The Cristo so far gives better promise than the others, the metal abundant and good, showing largely and well in the vein, and lowest tunnel now being driven to connect with a shaft for draining and clearing the mine.

The work on the Arrallon is too recent to expect much return as yet, though the miner in charge expresses the most lively expectations. He knows the mine and takes great interest and pride in the prosecution of the work, and it having been attempted partly because of this knowledge of its worth and capacity.

As yet the yield of ore from the mines does not fill the measure of our needs for the mills, but I reduced the working force (it being costly) in June for the sake of keeping down expenses until the mill-work should be complete or nearly so. I deemed it best to do so in view of the accumulation of ore, now heavy, though at the same time I did not know how large a part of it was worthless.

P. 248 Letter of October 8, 1866 (~~Ex. B, 284~~):

The La Luz mine proving unremunerative, and the small yield of ore being wholly rebellious, I transferred the force to the Cristo, in which the metal has increased in quantity and quality. It shows gold largely and promises well. The mine being not so well opened as the other, being newer, requires attention now, as it is, or appears to be, the mine that will be looked to to supply the mills in great part.

I doubt whether your expectations will be ever realized respecting the looked-for yield of metal from the mines, though sufficient may be had to repay well, I trust.

P. 252 Letter of November 17, 1866 (~~Ex. B, 288~~):

As already stated, the ore has been and is being repicked, and though a large quantity is pronounced without value, I do not accept it as gospel truth, but will satisfy myself of the fact by trial.

Letter of December 31, 1866 (Ex. B, 293):

> The stock of ore is large and, I believe, good, though that remains to be seen * * * (294). The prospect from the mines is not as good as formerly, though they vary so constantly that I have ceased to permit myself to be readily elated or depressed by their condition.

These extracts would hardly justify the averment of the memorial that the company was about to realize a clear profit of $1,000,000 a year out of these ores. It appears that De Lagnel remained at the mines long enough to get a run of the mill, at which time the second assay was made (p. 24), and he started to New York with the result—a lump of silver worth $250 or $300. Just what the yield was can not in the absence of the written report be determined, but the general result is made manifest from the letter book and De Lagnel's deposition. The latter, after having been five days before the Committee of Foreign Relations of the Senate, examined and cross-examined by the committee and attorneys, had become somewhat guarded as to his answers, but in giving his deposition in this suit he said (Compl. Ev., 27):

> Q. What did you report to Mr. Garth as to the prospects of the enterprise from the experience you had at the mines?
>
> A. I can't tell what I said in the precise terms I told him. I told him after this experiment what the result had been. What I said I could not tell you, whether it was $10, $15, or $20 a ton. I was merely going to say it disappointed us, because it fell far short of what we expected, and Mr. Garth, when I told him, was disappointed. He had very exaggerated ideas in regard to it.

In his testimony before the Senate committee as to this incident he said (Senate R., 64):

> He (Garth) expressed the greatest regret and disappointment. He had evidently had the greatest faith in the presence of great wealth in the mines. * * * He seemed to be staggered and could not understand how it was that everybody could have been wrong after he had been told this and that, and only found it out at the last moment.

But it is not necessary to resort to the fallible testimony of living witnesses to determine the tenor of De Lagnel's report to Garth, for we have the latter's record of it, written down at the time of its occurrence. In his letter to Exall of May 30, 1867, Garth writes (Ex. B, 319):

> Since my last letter Colonel De Lagnel has arrived and made known to us something of the state of things with you. I must confess that we are amazed at the results. It seems to me incredible that every one should have been so deceived in regard to the value of the ore, and I can but still hope that the true process of extracting the silver has not been pursued, and that before this time better results have been attained. Mr. De Lagnel expected that Mr. Sundel, of St. Dimas, would come to your aid soon after he left, and as this gentleman was said to be a practical chemist and metallurgist, he hoped some means would be discovered to get at the silver. If, however, the ores are indeed worthless, I don't see that any process of working will be of any avail, and have the worst fears that our enterprise will, after all, be fruitless of good. In regard to the working of the ore, I would advise that you don't waste it by running it through

the mill when you find that the yield is not satisfactory. I would suggest that you run, say, 2 to 3 tons of metal through the mill and see what the results are by the pan process, and then take a like amount of same sort of metal and crush it and grind as fine as possible in the pans, and then take it to the "patio" and beneficiate it and carefully compare the results of the trials; this is what I urged long ago, and think it well to do at once. I would advise that very frequent assays be made of the ores as raised out of the mines, and take out nothing that will not certainly be rich enough to pay well for working.

In his next letter, June 10, he recurs to the same subject, as follows (Ex. B, ~~320~~): "The account that Colonel De L. gave of the quality of the ores on hand was most unexpected and a fearful blow to our hopes." P. 284

I now proceed to give the reports which Exall sent to the New York office respecting the ores. In his first letter to Garth after De Lagnel's departure, May 6, 1867, he writes (~~Ex. B, 301~~): P. 265

Yours of the 24th April was received some days previous to the departure of Colonel De L., who will no doubt reach New York some time prior to the reception of this. Colonel De Lagnel will, of course, give you a full and detailed account of affairs as he left them, making it useless for me to make any further mention of them.

Since his leaving I have, as far as I think safe, reduced the number of hands at the mines, keeping only a sufficient number to show that they are still being worked. I have a light force in the Cristo; no improvement in the metal; a light force in the La Luz; the metal about the same. The La Abra, which we started on a month or two since, and

which should have been worked long ago, is daily improving, and I am in hopes will yet give some returns. Mr. Cullins seems quite sanguine in reference to it.

Colonel De Lagnel will give you an account of the mill and its work, which did not exceed our expectations.

The next letter is dated May 17. He says (~~Ex. B, 302~~): P. 266

> A day previous to my leaving Tayoltita, I spent a day at the mines. While at the La Abra I picked up two or three pieces of ore, which was then being taken out. Made no selection. The evening before leaving the hacienda for this port, I assayed the several pieces. The assay was *better* than previous assays of any ore on the patio, giving me $378 in silver and a large percentage in gold. It being very late in the day before I got through melting down, was unable to get an accurate gold value.
>
> The labor from which this ore was taken is improving and the vein widening ever since it was first started on. In my next I can give you a more correct idea of the La Abra metal, as by that time the different labores, which are now being worked, will have undergone a better test.

Following this is Exall's letter to Garth of July 13 (~~Ex. B, 306–7~~). He writes: P.P. 270-271

> As Colonel De L. had arrived, and of course given you a minute and detailed account of affairs here, I can't say that the contents of your letter surprised me much.
>
> * * * * *
>
> (~~P. 307~~.) I have succeeded in getting four miners to work by the cargo. They are working P. 271

in the Arryan, and getting out some good metal. I hope to be able to keep them there; by doing so it will secure the mine in every way. Four miners is all I had there before. Mr. Cullins thinks that in a short time he will be able to get more men at work in the other mines. We can do better with them when they are a little hungry.

* * * * *

I hope to be able to get along for a time at least without assistance, but if it can be gotten I would like to know, for fear I will not be able to keep things with what little I have or may be able to get from the ore.

The next letter from Exall is one of unusual importance, because it furnishes the only detailed statement of the reduction of the ores and the amount and value of the precious metal obtained therefrom which has ever been produced during this long and tedious controversy. The letter is almost exclusively devoted to the ores and the run of the mill. It bears date August 5, 1867 (~~Ex. B, 308-9~~):

The mill is now running on the same ore as I last worked. This run will finish it, and what ore to work then I know not. There is, of course, some little good ore on the great heaps on the patio, but it will have to be closely assorted, and the greater portion requires roasting, which is a slow operation and costly. I will at any rate do my best. I am now working 23 men by cargo; pay them not over $1 per week in cash. *I must* give them some little money. These are working in the Arryan and on the dump of the Rosesio. The Cristo is now idle; also La Luz and Abra. I can get no metal from them which will pay.

> The Cristo and La Luz, which have been worked for over a year, I am privileged to stop for four months. The Abra I must work; will put in some men; see what can be found. * * * The ore which is now being gotten out will average pr. assays about $75 per ton, but it comes in small quantities. * * * I can't see very far ahead in money matters; can count on nothing positive from the ores now on hand.

Attached to and immediately following the letter is the detailed statement of the run of the mill, as follows:

Statement of run of mill from 27 May to 13 July, inclusive.

Amount of rock crushed, 89 tons 1,676 lbs., producing 131 marcos 5 oz. refined silver, yielding at mint	$1,672.29	
Less mint exps	146.47	
		$1,525.82
Cost of chemicals	665.81	
labor	380.54	
wood, 95 varas, 62½	59.38	
		1,105.73
		420.09

From these figures it results that the yield of silver per ton was $18.78, and the net amount received by the company, after paying the cost of reduction, was $4.72, thus making the cost of reduction $14.06 per ton. But we know from the reports of Bartholow (~~Ex. B, 257~~) and De Lagnel (~~B, 264~~) that the cost of taking the ore from the mines was $15 per ton, from which, if we deduct the net yield of silver from the reduction ($4.72), we have a loss to the company on every ton of ore reduced of $10.28. Well might Garth, the treasurer and managing director in New York, exclaim, "If it cost more

P. 221
P. 228

than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned."

The three letters of Exall above quoted are acknowledged by Garth, and from them we know accurately the effect they produced in New York. Following quickly after the verbal report of affairs made by De Lagnel, they fully satisfied the directors that the enterprise was a hopeless failure. In his letter of July 10, 1867, Garth writes (~~Ex. B, 320-1~~):

> We have since received your letters of the 6th May, from the mines, and 17th May, from Mazatlan. We are also in receipt of the sample of bullion sent at same time by express, the value of which is not yet ascertained, having not yet been able to get it from the assay office, but hope to do so to-morrow. I fear, however, that it is worth but little more than what it cost to get it from the custom-house to Mazatlan and the expenses on it here. I am glad to hear that you are taking out *rich* metal, and hope it will turn out *valuable*. It seems almost incredible that all parties should have been so mistaken in the value of the ore now on the "patio," and I don't see how it is that Mr. Cullins and Mr. Sloan, old and experienced miners as they are, as well as the old Mexican miners, should have been so deceived as to the value of the ore. If it so much resembles rich metal, I don't see how you can tell the good from the worthless except by actual fire assays. You should make these very often, and not go on and get out large quantities of worthless ore at great expense, thinking all the time it was rich metal. You will see, from all my letters, that no further aid can be given you from here, and that you must rely upon the resources you now have, and which, we think, ought to be ample to pay off

the debts and to sustain you in current expenses, which you should cut down to the lowest possible point. I can but think that in the vast quantities of ores now on the grounds of the hacienda there must be a considerable am'nt of rich metal, and which you should beneficiate as soon as possible, taking care not to throw away or waste any that would pay to work. Of course you keep an accurate account of the cost, not only of raising and transporting the ore to the mill, but of the cost of crushing it and converting into coin or bullion; and, as it is a matter of simple calculation, you can soon see if it will pay or if it is a losing business. If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned. I have heretofore called your attention to this point, and wish you to give careful attention to it, and would request that you furnish us such full and detailed statements on this point that we can see for ourselves. Give us the full particulars of expenses, am't of ore raised and its value, and the results after beneficiating, etc. Be careful about leaks and expenses, cut off all that is possible, and watch very closely every department with that view.

P 286

1867

Garth to Exall, August 10 (~~Ex. B, 321–2~~):

I wrote you briefly on the 20th ultimo, and since have your favor of 11th June from Mazatlan. Your letter by private hand had reached me some time previously.

We observe with deep regret and disappointment that you are making but little progress in beneficiating the ores now on the "patio," and that the yield had not improved. This is a severe blow to the enterprise, as we had expected long before this

time that you would not only be in position to sustain yourself, but to remit us enough to pay off the large indebtedness here.

Garth to Exall, October 10, 1867 (~~Ex. B, 322~~):

> Since ours of 30th September, we have yours of 5th August from Mazatlan and note contents. We are deeply pained to find that you are not well, and that, and are still without favorable results in the enterprise from which we all had such high hopes of success. I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources of the mines and mill to keep you going and to relieve you of debts heretofore contracted.

This was the last word of the company from New York, and naturally so. The bankrupt concern had no money or credit, and the ores at the mines were worthless. There was nothing to be said further than was said in this last letter.

As requested in Garth's letter of August 10, Exall faithfully executes his instructions as to sending "complete accounts, * * * and also your [his] opinion in full of the prospects of the mines, value of the ores, cost of raising and working, with yield of same." In his letter of October 6 (~~Ex. B, 310~~) he says: "By last steamer I sent you full statement of business of hacienda—the runnings, returns, and expenses of the mill, account of ores, etc." As to the ores and prospects, he writes:

> I am working the mines with as few hands as possible. What little good metal is taken out amounts to almost nothing. * * * I have exhausted all

the ore that I had on hand that was worth working. That which I worked was very poor and the yield small. The La Luz, on the patio, won't pay to throw it in the river. I have had numerous assays made from all parts of each pile; the returns won't pay. Amparas are not now granted, and mines are to be held only by working.

I am compelled to keep men in mines which yield nothing, merely to hold them. This I can do no longer, as I have nothing to give the men for their labor, and must now take the chances and leave the mines unprotected.

P. 276

Exall to Garth (Ex. B, 312):

Nothing can be done without a further expenditure of money. I am now doing little or nothing in the mines, and will, when I return, discharge the few men which are now at work in them. This I am compelled to do, as I have no money, and my stock is almost entirely exhausted, and I fear if money isn't very soon sent some of the mines will become open to denouncement.

Exall devotes the greater part of the next letter, December 18, to urging that money be sent to save the property, a portion of which I have already read. As to the mines, he says (Ex. B, 313): "I am doing nothing at the mines, and have only one person left with me."

P. 277

His letter of January 24, 1868, is Exall's last written word to Garth. He says (Ex. B, 317): "In previous letters I have given you full and detailed accounts of affairs here, and such frequent repetitions I find useless, and I will simply state that I am doing nothing whatever at the mines, and can not until I receive money to operate with." This, it will be remembered, is the letter in which

P. 281

he notifies Garth—"If, by next steamer, I receive no assistance from you, I intend leaving for the East." And we shall see how he carried out his resolution.

There is only one other fact on the subject of the value of the ores which I wish to bring to your honors' attention. My industrious friend, the respondents' counsel, has ransacked the pile of account books introduced in this suit, and the net result of this investigation is that he finds four items, and only four, which would seem to have been the silver product of the mill from the time it was put in operation up to the departure of Exall in February, 1868, a period of ten months. These items are, respectively (Resp. Ev., 96), $1,356, $1,525, $923.16, and $760.42. If we concede that the piece of silver that De Lagnel sent to New York was worth $300, probably an extravagant estimate, we reach the conclusion that the total yield of these ores, alleged in the memorial to be of "extraordinary richness," during the whole existence of the company was $4,864.58. I think your honors will agree with me that I have made it clear from the company's own records, written by its own agents, that the ores taken from the mines were absolutely worthless, because the cost of the extraction and reduction of the ores was much more than the little silver that was in them; and that no amount of affidavits of discredited and perjured witnesses can change that fact. It has also been shown that the treasurer and managing director in New York was fully informed of the worthless character of the ores, and was in possession of detailed reports of the business operations at the mines. In the light of

these facts, your honors now see how absolutely false and fraudulent are the sworn averments of the company as to the richness of the ores, and that at the time of their forcible expulsion they "were in the act of realizing the extraordinary profit of a million dollars per annum."

In view, also, of these facts it seems a work of supererogation to examine the absurd charge in the memorial that "large quantities of ore, taken out of the mines, were taken from the company, the employees of the company being deterred by threats from resisting such spoliation," and, notwithstanding this alleged fact, the astonishing averment is made that there were a thousand tons of rich ore extracted which the company had to leave at the time of the abandonment, which were carried off afterwards by the Mexicans and lost to the company. There was no motive to steal or carry away ores that were absolutely worthless, and no number of ex parte affidavits can convince this court that any such improbable acts were committed. It is proved by a number of witnesses that the ores abandoned by the company remained as they were left for many years, because, as Exall wrote Garth, it would not "pay to throw it in the river;" and it is an admitted fact that the abandoned mines have been open to denouncement, since left by the company, by any person who chose to work them, and that they have been so worked by various parties, and well-informed witnesses testify that these operations have resulted in loss. It is now apparent that had the company laid before the commission the papers respecting the character of the ores in their possession when the claim was filed, and the

absence of which Sir Edward Thornton so severely criticised, so far from an award being made for $100,000 on account of ores, the whole claim would have been discredited and rejected.

THE TESTIMONY OF SUNDELL.

I come now in chronological order to the averment in the memorial respecting the final forced abandonment of the mines. Before taking this up for examination I desire, however, to notice the earnest effort which has been made in respondent's brief to discredit one of the witnesses introduced in this suit by the Government, Frederick Sundell. Twenty-two pages are devoted to this attempt, and in no part of the brief does the acknowledged skill of my learned friend more conspicuously manifest itself. And at this point I can not refrain from expressing my admiration for his unflagging devotion to his client's cause. In the years gone by which have marked the history of this now famous case, a score and more of distinguished advocates have appeared for the claimants, embracing in their number ex-Cabinet officers, ex-diplomats, ex-Senators and Congressmen, and the bar of the whole country almost has contributed of its ablest champions. Some of these are dead, but many of them are yet living, but in the final scene he only has the persistency to continue the contest. And he does not mistake his client's needs when he seeks to affect Sundell's testimony. It is by no means essential to the Government, but if it is accepted it completely overthrows all the important averments of the memorial and establishes the fraud and perjury.

Frederick Sundell's deposition begins on page 57 of complainants' evidence. He was a native of Sweden, engaged as an assayer by the Durango Mining Company, an American enterprise at San Dimas, near to Tayoltita. He had received a scientific education before coming to Mexico, having spent three years in the mining school of Sweden. So far as appears from the records in this case he was the only person in that region who had received a scientific mining education. In this connection it is of interest to make an extract from Garth's letter to Exall of May 30, written after De Lagnel's return. He says (Ex. B, 319):

> Mr. De Lagnel expected that Mr. Sundell, of St. Dimas, would come to your aid soon after he left, and as this gentleman was said to be a practical chemist and metallurgist, he hoped some means would be discovered to get at the silver.

Sundell was in the employ of his company and was at San Dimas during the whole period of La Abra Company's history in Mexico—that is, from 1865 to 1868—and resided in Mexico ten years, with an absence of two years in 1869 and 1870, and temporarily absent in 1872. For some time before giving his deposition he had resided in California. No attempt was made to impeach his character and no motive is shown why he should not testify truthfully. I do not propose to follow Mr. Kennedy through all the points of his assault upon Sundell's credibility, but will give such attention to them as may be necessary to show the character of the assault. He cites Sundell's statement that the distance from San Dimas to Tayoltita was "about 4 or 5 miles," which, on

cross-examination, he said he had not mistaken for leagues. He said he meant "in a more or less straight line," as he had surveyed it for a telegraph line. But Mr. Kennedy says other witnesses agree that the distance was 4 or 5 leagues; that Sundell himself says it was two or three hours' ride, and his assertion that one had to climb a mountain 3,000 feet and go down 4,000 feet is held up to ridicule. Now, if my learned friend was as experienced in mountain travel as he is in dissecting evidence, he would not have made this point. It is true one or more witnesses have fixed the distance at 4 to 5 leagues. But De Lagnel has testified (C. E., 52): "They (in Mexico) do not measure distance by miles; they measure it by hours or days that it takes a mule to go from point to point." One who has traveled in the Sierra Madre may well understand how San Dimas might not be geographically more than 5 miles from Tayoltita and yet one be occupied two or three hours in the journey and traverse even 4 or 5 leagues.

Another evidence of Sundell's unreliability is cited in his statement that there never was any mining board in existence at San Dimas, and that a mine could be abandoned at that time from six months to a year. (Resp. brief, 33–4.) To show that Sundell was in error, the fact is cited that Granger and Torres were put in possession of a mine in 1871 by the mining board, and a quotation from alleged Mexican laws is made to prove that the abandonment or suspension of work can only continue for *four months*. In order to understand just what Sundell's declarations were, his testimony should be

read. He was evidently speaking of the condition of things in 1866 and the period when they "had no government," and not of 1871, when the Republican government had restored the regular reign of law. Sundell is sustained in his statements by the letter book. On page 264 is found a letter from De Lagnel, addressed to J. M. Gurrola, who is described by him on page 291 as municipal alcalde, the subprefect, the term used by Sundell. De Lagnel's letter to the prefect is "to ask for an extension of six months." In his letter to Garth of August 16, 1866 (~~p. 275~~), he says, "all the mines except La Luz and El Cristo were under prorogue till January next." It thus appears that Mr. Kennedy's law was not in force in Colonel De Lagnel's day in Mexico. The foregoing are sufficient to illustrate the manner in which Mr. Kennedy would break down Sundell as a witness. I shall have occasion to recur to the subject, but for the present I have said enough on this point.

THE FORCED ABANDONMENT OF THE MINES.

I come now to the subject of Exall's forcible expulsion from and abandonment of the mines. On this point, as on others, the memorial is very vague. It avers that "they were compelled to abandon their said mines * * * by reason of unfriendly and illegal acts of the Mexican officials;" and again, "It became impossible for the company to work the mines, and the same were abandoned as aforesaid," and "said enforced abandonment * * * utterly ruined said company." The umpire says: "The conduct of the authorities was such * * *

that for this reason, as well as from the well-grounded fear that their lives were in danger, they resolved to abandon the enterprise;" and he fixes "the period of the forced abandonment of the mines about March 20, 1868." (H. Ex. Doc. 103, pp. 73, 75.) Evidently the language of the umpire, in his findings of facts, is based upon the evidence, and not upon the vague averments of the memorial.

Exall is the only witness before the commission who states the circumstances in any detail of the alleged forced abandonment. In his first affidavit he says (Ex. A, 337): P. 31

> By reason of these facts it was very difficult to keep men there at work, and the prosecution of the work was greatly hindered and delayed, and it finally became utterly impossible to continue the mining operations of the company, and I was compelled, with my men, to give up the same entirely, and to abandon the mines and all the mining implements and property of the company to save our lives.

In his second affidavit, in rebuttal, he swears (Ex. A, 461, 2, 4): P. 153, 156, 158

> All the mules of the company, except those which had been captured by the military on the road, and stolen from the hacienda, and except the saddle mules upon which some American employees and myself escaped to Mazatlan, and the one ridden by my servant, were abandoned at the hacienda, with all the other property of the company. * * * (P. 462): When those works were completed, and we were ready to realize, the facts were widely circulated by Mexicans, and I was soon thereafter notified by said prefect, Olvera, that the company

P. 156

would be no longer tolerated there, and that he could not protect the company if I attempted to remain, or if the work should continue, and he advised me to go quickly, to avoid personal violence, which I did do, believing that he knew the plans, and the determination of the people and the authorities to drive us out, in some way; and the manner of doing it being strongly hinted at in his official warning, I left and abandoned everything the next day, or night. * * * (P. 463): They might have told, if they would, the reason of my sudden departure and abandonment of the company's interests and property there, as I know some of said witnesses accelerated my departure by breaking in the doors of the hacienda, and by the intention of violence if not of murder.

Granger, in his affidavit for the claimant, swore that the company were forced to abandon the mines in March, 1868 (Ex. A, 353), but as he gave affidavits directly to the contrary to the Mexican Government, his testimony is not worth considering. The only other witness, who claimed to know the facts of his own knowledge, was John Cole, the veracious individual styled in respondent's brief "an unimpeached and unimpeachable witness" (p. 139). He says (Ex. A, 362):

> Deponent further says that he is personally cognizant of the fact that Charles H. Exall, the last superintendent of the said "La Abra Silver Mining Company," was driven away from their mines, together with his American employees, and was compelled to abandon the same by the influence and connivance of the authorities of the district of San Dimas, and by the conduct of the troops of the Liberal Government of Mexico, acting under President Juarez.

The affidavits of a number of other witnesses were presented by claimant to the commission, such as Smith, Bissell, Gamboa, and Chavarria, supporting the statements of Exall and Cole, but they show upon their face that they were all based upon hearsay evidence, and would not be considered in any court of justice.

Mexico introduced the deposition of a number of residents of the locality to the effect that no such expulsion ever occurred. I quote only the statement of Ygnacio Manjarrez, one of the owners from whom La Abra Company purchased the mines. He swears (~~Ex. A, 127~~): R/21

> The Americans abandoned their works because they could not make them produce silver, and not because the Mexicans run them off, for they enjoyed all necessary security in a higher degree than the Mexicans themselves.

But the testimony of resident Mexicans is not necessary to establish the utter falsity of the statements of Exall and the other witnesses whose affidavits were filed by claimants before the commission to support their memorial. We need only to resort again to the company's own written record of the event. After having shown, as I have, the bankrupt condition of the company and the worthless character of the ores the motive and the necessity for the abandonment of the mines doubtless become apparent to the court, and but for the persistency with which the respondent's brief clings to the story of Exall's flight and its alleged cause there would be no occasion to pursue the subject further. Regretting the necessity which requires me to ask for your patience, I must return to the letter book. I do

not propose to go over, except in a few instances, those portions of the letters of Exall and Garth already quoted, but mainly to cite portions not yet read. After the run of the mill, whose details were communicated to Garth in his letter of August 5, Exall lost all hope of getting any silver of consequence out of the ores to keep up the company's operations, and in the very next letter begins his appeals to the company to send money to hold the mines. In this letter, October 6, he writes (Ex. B, 310): "You must either prepare to lose your property here or send me money to hold it (and that speedily) and pay off the debts of the concern;" and this he repeats in a variety of urgent expressions in the letter, closing with this statement: "I hope before this reaches you that some steps will have been taken to procure means to operate with." The same month he applies to the authorities for "an amparo for six months on the mines" (naming three of them), giving as a reason that he is obliged to stop work in them "till he can receive instructions from the company concerning the way of resuming the works and the necessary funds therefor." (Ex. B, 311.) The next letter, November 17, makes the necessity for money from New York and the danger without it of losing the property its exclusive topic. That of December 18 is to the same effect, and from the following extract he evidently was contemplating the step announced in the next letter (Ex. B, 313):

> My position is extremely embarrassing, and I know not what to do, and will have to be guided entirely by circumstances. I will, of course, do everything in my power, and may have to act in a

> very cautious manner, and will probably act in a manner which may occasion censure. Now, all I ask of you is to judge my actions justly, and consider my circumstances, and believe I am doing the best for your interests.

Then follows the next and last letter written by Exall to the New York office. In it he says, January 24, 1868 (~~Ex. B, 317~~):

> What is your intention? Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them. If by next steamer I receive no assistance from you, I intend leaving for the East. I shall go via San Francisco; will from there telegraph you what further steps I shall take.

Sundell has testified before this court in respect to Exall's announced intention to leave, as stated in the foregoing letter. I read his testimony on this point (~~Compl. Ev., 61–2~~):

(Read from question 71 to 92.)

His testimony in 1877, referred to, was as follows (Ex. B, 339):

> Mr. Reed [Rice], superintendent of the Durango Mining Company, left Durango in January of 1868, and deponent remembers that Mr. Exall came to Mr. Reed [Rice] and told him how sorry he was not to accompany him in his trip, but he was in hopes of following him in the next steamer, as he had to go to New York to consult with the company. Exall said this in public, and did not make a secret of his intended trip.

Mr. Kennedy attacks Sundell's deposition on this point; first, because he could not remember in 1894 the exact

statement of Exall to which he had testified seventeen years before, and second, because of his error in saying Rice left in January, 1868, when it is presumed that he did not leave till two or three months later. As to the first point I am willing to let Sundell's testimony speak for itself. To prove that Sundell was mistaken in his statement that Rice left in January the testimony is quoted of the president of the company of which Rice and Sundell were employees. In this he states (Resp. Ev., ~~92~~) that Rice resigned in 1867, when his successor was appointed, and did intend to leave about the time named by Sundell, "but for certain reasons remained over." Sundell was testifying as to events which happened twenty-six years before, and such a mistake was a natural one, and does not necessarily impair his testimony, especially when on the essential point, as to Exall's intentions, he is so fully sustained by Exall's letter written at the time. While on this subject I notice one other assault on Sundell's testimony and then dismiss it. Respondent's brief cites Sundell's statement that Martin, the superintendent who succeeded Rice, "arrived at San Dimas about October, 1867," but, says the brief (p. 42), Martin did not arrive "until the fall of 1868," and cites without quoting Exhibit A, page ~~467.~~ Turning to that reference it will be seen that Martin was not asked when he arrived in San Dimas, but the following question:

> Q. 2. Where were you residing, temporarily, from about September, 1868, to October, 1870?
>
> A. In the district of San Dimas, in the State of Durango, Republic of Mexico.

Such use of evidence will hardly break down an otherwise credible witness. The president of the company, as we have seen, has testified that Martin was appointed in 1867, and that statement certainly tends to support Sundell.

We return now to the letter book. I do not deem it necessary to quote more at length from Garth's letters to Exall. It has been seen that he had given Exall repeated advice that the company was bankrupt, that no more money could be expected from New York, and that he must depend upon his own resources. In his letter of August 10 he writes (~~Ex. B, 322~~): "You must manage to get along with what resources you have, as we can not give you any aid from here;" and in that of October 10, the last (~~Ex. B, 322~~), "It is not possible for us to direct any particular course for you." Garth thinks he did write letters after October 10, but his recollection is evidently of little value. In answer to Mr. Maury's question, he said (~~Compl. Ev., 81~~): "I don't remember. I don't know. I think I did." But under the persuasive influence of Mr. Kennedy's personality, later in the examination, he said (~~Compl. Ev., 85~~): "I have no doubt that I did." But there is evidence in the letter book tending to show that the one of October 10 was his last. Exall, in his letter of December 18 (~~Ex. B, 313~~), acknowledges the receipt of the letter of October 10. Five weeks later, January 24, he writes Garth (~~Ex. B, 317~~): "I came down to meet steamer from San Francisco in hopes of receiving letters from you; I received none." But notwithstanding this failure he waited on

P. 286

P. 286

P. 5-41

P. 5-41-

P. 277

P. 281

for another month longer, and then, being without the so long-desired relief, he places in the letter book a copy of his power of attorney to Granger, in some respects the most important document in this case (~~Ex. B, 317~~):

P. 287

TAYOLTITA, *Feb'y 26, 1868.*

MR. JAMES GRANGER.

SIR: As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York, to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of La Abra S. M. Co., together with its property.

You are invested hereby with all power confided to me, of course, acting in all your transactions with an eye to the interests of the company.

This will, to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf.

Very respectfully,

CHARLES H. EXALL,
Adm'r La Abra S. M. Co.

If Granger and Exall were in a conspiracy to deceive the company, as Exall swears in his affidavit of 1878, why should he have written this letter, and, if given to Granger, why was it copied in the letter book? There is no reason to question the truthfulness of this, Exall's last official act. There could be no motive to give Granger, a party to the alleged conspiracy, a false statement. It is in harmony with the preceding letters, and utterly inconsistent with the Exall affidavit of 1878.

Exall left the mines on or about the date given to his power of attorney to Granger, February 26, 1868, and

not March 20, 1868, as stated by claimants' witnesses. In his letters to Granger this date can be fixed with approximate accuracy; and from these letters his motive for and object in going are made apparent, and they are utterly inconsistent with the theory upon which the whole claim was founded, to wit, that the company was forced to abandon the mines because of the hostility of the Mexican authorities, and because the lives of Exall and his associate employees were in danger. I read extracts from those letters. (See letters of Exall to Granger, ~~Ex. B, 322–326.~~) P. P. 286–2

These letters show that Granger was in peaceable possession of the mines, books, and property of the company when Exall left, and that the latter expected to so find Granger in possession on his return. There is other abundant and reliable evidence on this point. From the letter book it appears that he was in possession August 12, 1868, and in response to a call from the tax collector he asks him "to wait until the month of November, at which time said superintendent (Exall) is to come." P. 282 (Ex. B, ~~318.~~) From a document introduced before the commission, it is shown that Granger, for the company, extended Exall's lease to Soto for the Guadalupe hacienda on August 7, 1868. (~~Ex. A, 438.~~) P. 132 Extracts from the account books of the company, introduced in this court as evidence, show that up to April 30 Granger was in charge of the store and disposing of the stock. Sundell, in his deposition, says that Granger remained at Tayoltita immediately and for some time after Exall left, living in the company's house. (Compl. Ev., 68.). Torres, who

is a witness before this court, described the condition of things after Exall's departure in such a picturesque manner that I can not refrain from quoting (~~Compl. Ev., 94–5~~):

116. Q. Do you know how long Granger remained at Tayoltita after El Mudo left?

A. Nearly a year.

117. Q. Where did he go then?

A. He went to San Dimas.

118. Q. Did you see him often during the year he remained in Tayoltita after El Mudo left?

A. I used to see him at all times.

119. Q. What was he doing in Tayoltita?

A. Sitting down eating—enjoying himself—waiting for the company to come there with funds.

120. Q. Was there any work going on in the mines or the hacienda under Granger?

A. When Mr. Granger was there all operations ceased. He was taking care of the hacienda; he had been given charge of the hacienda by El Mudo. He was always waiting for funds, and funds were never sent to him.

121. Q. What did he do with the property of the company?

A. Sold small portions of the property that was there, such as salt, and whatever he could sell—instruments and other articles.

I have hitherto failed to notice in some detail, as I had intended, the labored attack made by my friend, the respondents' counsel, on Torres's testimony. At this late period in my argument your honors will hardly have the patience to hear much on that subject. I shall content myself with noticing one or two, as an illustration of the whole. Mr. Kennedy cites Torres's statements

that "El Rosario mine was never worked by La Abra Company," and that the company worked "La Luz and El Cristo only." He then proceeds to show from the statements of witnesses before the commission and from the letter book that the company did work other of its mines. But the account books of the company show (Resp. Ev., 96) that out of a total of $39,000 expended on the nearly a dozen mines only $180.90 was spent on El Rosario, and $33,700 were expended on La Luz and El Cristo. When it is remembered that Torres was testifying from memory of events which occurred nearly thirty years before, it must be admitted his testimony is substantially confirmed by these written records made at the time. Again, Mr. Kennedy refers to Torres's statement that Del Valle and Manjarrez lost $40,000 on La Luz mine during the two years previous to the sale, and then quotes Del Valle and Manjarrez to show that the mines owned by them were profitable during these two years. But it is plain that Torres was speaking of La Luz mine only, and his statement might be entirely correct, and yet the aggregate result of Del Valle and Manjarrez's operations be profitable. I will not dwell on this subject. Torres, though unable to read, was not an ignorant man. His testimony when read by your honors will impress you, as his conduct before the Senate committee did those who heard him, that he is a straightforward and honest witness, thoroughly versed in the practical operations of mining, and well qualified to give evidence as to the facts about which he testified. If his testimony is accepted by this court as true, then it must

by a single document from the company's records, of which it is now known the company had an abundance at the time Collins made his affidavit. Some of these records are now in the possession of this court, and they show beyond any question that Collins exaggerated his statement about one hundred per cent. The new evidence before this court consists of the annual statements of the company, the cash accounts of the company; the letter book, which contains a full history of its financial operations, including the drafts drawn and moneys expended; the judgment of the New York court, and the testimony of Garth, the treasurer. These data enable the court to determine with a great degree of accuracy the amount of money put into the enterprise. Let us examine the facts as shown at the New York office. The annual statements of the company for 1867 and 1868 state that the "capital stock actually paid in" was $157,000; but the annual statement for 1866 shows that of this amount $22,000 was in stock "issued in payment of La Abra silver mine." (~~Compl. Ev., 3–5.~~) The cash payments on the stock were made in gold. These facts are confirmed by Garth and other witnesses. (~~Resp. Ev., 55~~; Senate Report, p. 194–6.) In addition to this there was the judgment against the company for $53,670 (~~Compl. Ev., 8~~), which represented various advances made by different directors. But we know from Garth's statement made before the Senate committee (Report, p. 835) and from our knowledge of the practice prevailing in the courts of the United States at the time that this judgment represented the currency

R. 463 – 465

R. 704

R. 468

value of the indebtedness upon which suit was brought. The indebtedness of the company is fixed in the annual statement for 1868 at $72,000. Garth was examined on this point and testified that the advances made by stockholders was more than $40,000, but could not swear it was as much as $70,000. (Resp. Ev., 68.) When before the Senate committee, he was asked to name the debts against the company other than the judgment, and all that he could remember and specify as having been paid was to Exall for salary, $2,000 or $2,500, and to Mr. Hearn, a director, for advances, $1,500 or $2,000. (S. Report, p. 834–5.) We know from the letter book and Garth's letters that the last draft (Feb. 5, 1867, Ex. B, 298) which was honored by the company had been paid some time before the judgment and must have been included in it. If we reduce the judgment to a gold basis at 50 per cent, we are enabled from the foregoing facts to make up this table:

Total cash expenditures, 1865–1868.

Stock (less $22,000 to Hardy for La Abra)	$135,000
Judgment ($53,670 in currency)	35,780
Exall's salary paid	2,500
Hearn's advanced paid	2,000
Total	175,280

Let us now turn from New York to Tayoltita. On page 95 of respondents' evidence (printed) will be found a cash statement from December 15, 1865, to January 1, 1868. An examination of this statement and a comparison of it with the letter book will show that it embraces

all the cash that ever could have or did come into the hands of the superintendent at the mines. By a comparison with the statement on page ~~96~~ it will also appear that it embraces all payments on account of the purchase of the mines and the machinery. The cash statement shows a total of $163,009. The statement of balances of accounts shows a total of $169,112. This difference is unimportant and easily accounted for. The general result of these figures is substantially confirmed by the banking and business houses at Mazatlan through whom all the money between the New York and Tayoltita offices passed. Echeguran, Quintana & Co. was the house through whom the business was transacted during Bartholow's term and up to July, 1866, when De Lagnel transferred the business to the house of Echenique, Peña & Co., which continued to transact the business of the company up to Exall's departure. (~~Ex. B, 269.~~) Pedro Echeguran, of the first-named firm, testified before the commission that the transactions of La Abra Company with his firm amounted to $108,600, which included the payment to Del Valle for the mines. (~~Ex. A, 410.~~) Peña, of Echenique, Peña & Co., states that the total of their transactions amounted to $67,000. (~~Ex. A, 409.~~) Those two sums amount to $176,600.

We thus have three separate and independent sources from which to determine the actual cash outlay of the company. The variance is so small that it only serves to confirm the general result. The theory for the manifest discrepancy between these amounts taken from the company's own records and Collins's figures, which is

set up in respondents' brief and based upon the testimony of Ely, is that the figures represent United States currency and not gold. But respondents' counsel overlooks the fact that Collins states the purchase price of the mines, $50,000, admitted on both sides to be in gold, and makes no distinction when he comes to set forth the expenditures of the company. Collins knew that his affidavit was to be used before an international commission, and if he did not as a good business man know that gold is the basis of all international transactions his overshrewd lawyer, who says he drew the affidavit, was well aware of the fact that the treaty (Art. IV) expressly provided that the awards should be paid "in gold or its equivalent." (H. Ex. Doc. 103, p. 8.) Besides, Sir Edward Thornton adopted Collins's figures as made upon a gold basis, and gave his award in gold, without for a moment considering they were on a currency basis. I shall refer again to Collins's attitude before this court when I come to consider his affidavit in detail.

Before dismissing the matter of expenditures, I direct attention to one item, included in all these statements and embraced in Collins's totals, which was improperly included and fraudulently concealed by Collins. I refer to the amount paid for assessments on the 550 shares of stock in the Guadalupe Mining Company, owned by La Abra Company, to the amount of at least $9,000. (Ex. B, 288.)

Mr. Kennedy cites the allegation in the bill of complaint wherein the Government charges that Collins and others grossly and fraudulently misstated and exaggerated

the amount of money expended by the company, and very truly says it is an allegation of great importance. It may be added, also, that it is of very serious importance to the company, in view of the evidence now before this court.

THE BOOKS AND PAPERS OF THE COMPANY.

The evidence, mainly consisting of the books and accounts of the company itself, were, as I have said, in the hands of the company at the time the claim was filed before the commission. Garth has stated, and it is admitted by respondent's counsel (~~Compl. Ev., 2),~~ that Mr. Worthington, the secretary of the company, was in New York in 1870, the year the claim was filed and the year after the claimants began to take their testimony. Garth says the secretary had charge of the books and papers of the company kept in New York. We now know that among these books and papers were a letter book, a stock book, a minute book, and if the company observed the most ordinary business methods, there must have been a cash book. There were also the annual statements, and there should have been some record or entry of the judgment of the New York court. There were also the letters of Bartholow, De Lagnel, and Exall, and the monthly financial statements, reports of the ores extracted and of assays, returns and expenses of the mills, copies of balance sheets from the books, etc. These papers, in the possession of the commission, would have thrown a flood of light upon the averments in the memorial, but they were all carefully withheld by the claimants' attorneys. Respondent's counsel seeks to divert attention from this

fact by alleging that the Government in this suit and the representatives of Mexico heretofore have been making demands upon the claimants' attorneys to produce the books and papers kept at the mines, when during all these years they have been in the possession of the Mexican Government; but no such demands have been made.

Exall's letter to Granger show that the books were left at Tayoltita. It was not those books for the production of which notice was served on claimants' attorneys, but the books in New York and the letters, records, and statements which the letter book showed had been sent to the home office. (~~Compl. Ev.,~~ 2.) Neither is it true that in presenting the letter book and letters accompanying it to the Secretary of State and to Congress the Mexican Government caused it to be understood that they constituted all the records which it had obtained and possessed. That Government always looked forward to an investigation, preferably of a judicial character; meanwhile it submitted such evidence as would be sufficient to determine whether the charges of fraud and perjury which it presented should be investigated. When this judicial examination was instituted the account books of the company received through Granger were produced in due time. The fact that when produced they were found to be of so little importance, of itself refutes the charge of bad faith brought against Mexico. The charge as presented in respondent's brief is unworthy the high character which its author sustains in the profession, and ought never to have been made. These books were received by Sr. Vallarta, secretary of foreign affairs of Mexico in 1878, and have been in the charge of Hon.

Ygnacio Mariscal, his successor, up to their presentation to this court in 1894. I had the honor of a personal acquaintance with Sr. Vallarta. Some of the members of this court have had a personal acquaintance with Mr. Mariscal so long the honored diplomatic representative of his country in Washington, and for fifteen years past the distinguished and able secretary for foreign affairs of his country. They are gentlemen incapable of committing a dishonorable act, and charges against them of bad faith can only react upon their author. As well might a charge of official dishonor be made against Daniel Webster or William H. Seward.

EXALL'S VISIT TO NEW YORK AND ITS RESULTS.

We return now to Exall's trip to New York and its results. Aside from his letter to Granger from Mazatlan, the only other evidence of his presence there was that he went to the business agency of the company at that port, Echenique, Peña & Co., and borrowed $250 for his expenses to New York. (~~Ex. A, 409.~~) It does not appear from Mr. Peña's deposition, taken by claimant, that Exall made any complaint about a forcible expulsion from the mines. The only complaint in the deposition is that the $250 has never been paid. Extracts from Garth's letters of July 10 and August 10, six and seven months before, would seem pertinent in this connection (~~Ex. B, 321–322~~):

P. 103

28-5-28

> (July 10:) Don't run into debt or get into difficulty with the authorities, if there are any such things existing, but at the same time be firm in

maintaining your rights, and don't submit to imposition except by force, and then make a legal and formal protest as a citizen of the United States and as an American company duly organized and prosecuting a legitimate business under the protection of the law, and our rights will be protected by our Government.

(August 10:) From the reports we get in the papers we find that Americans and all foreigners will not be protected in their persons and rights in that country, and that we may have to abandon our property there. If so, you must take all necessary and legal measures, by protest and otherwise, to secure our claim against the Government.

(By reference to Senate Report, pp. 165–166, it will be seen that Garth swore that at the time those letters were written nothing had occurred at the mines to make a claim against Mexico.)

There was an American consul at Mazatlan, and Exall had made his acquaintance, but he did not call upon him after his flight (~~Resp. Ev., 40, 41~~); no protest was filed before him, and no report made to him of this great despoilation of the valuable property of an American company. In due time Exall arrived in New York. His account of his reception by the company, as contained in his letters to Granger, bear the "earmarks" of truth, and are confirmed by Garth's testimony. I am careful to make this statement, because the respondents' brief has said that we should not believe anything he (Exall) says unless it is corroborated by admitted facts or other sufficient evidence" (p. 181). (See extract from Exall's letters to Granger, Ex. B, 322–326, and Garth's testimony, Resp. Ev., ~~57, 62–3–4–5.~~)

P.P. 689-69

P.P. 286-29

P.P. 706, 711-712-713-714

Thus we see that Exall's report to Granger that Garth was "disgusted with the enterprise" and "would have nothing more to do with it," and that the company was in the same frame of mind, is fully confirmed by Garth's testimony. Exall brought suit for wages due, but his claim was finally paid, and he and the company, as Garth expressed it before the Senate committee (Senate R., 153), for a time dropped into "innocuous desuetude."

At this point it is necessary to notice the most wretched and disgusting piece of evidence (if it can be dignified by such a term) in this whole mass of falsification and perjury. When the contents of the letter book was brought to the attention of Congress by means of the Slaughter pamphlet in 1878, it struck consternation into the ranks of the claimants' attorneys, and Mr. Ely, the man Friday of the company, was summoned to Washington to bring his peculiar talents into play. It was he who drafted the Collins affidavit, and had been the hand behind the screen during the preparation of the claim for presentation to the commission. As soon as he saw the situation in Congress he posted off to New York to see Exall, but, strange to say, he neglected to take with him a copy of the pamphlet containing the letters. Upon his verbal statement of the contents of the letter book, Exall made an affidavit (~~Resp. Ev., 19~~), the composition of which Ely modestly credits to Exall. Whichever was the author, it is a remarkable document. After reading it, your honors will not wonder that Mr. Kennedy should declare, "It prevents us from believing anything he says unless it is corroborated by admitted facts or other sufficient evidence." Exall's story, in brief, is that he and

Granger concocted a plan to impose upon the company the false statement that the ores were worthless and the mines were of no value, in order to get the company to part with them for a song, and that the letters to Garth which appear in the letter book were a part of the scheme.

Exall's story does not, however, dispose of the letters of Bartholow and De Lagnel, nor his own letters to other persons; nor the entries in the account books, and it is in direct conflict with a mass of other evidence before this court. But the affidavit is so improbable upon its face and is so conflicting in its statements that the court will give to it no manner of credence. It will only serve the purpose of more fully exposing the utter depravity of the claimants' chief witness before the commission.

The history of the prosecution of the claim throws additional light upon its fraudulent character. It has been seen that after the alleged forcible abandonment the company did nothing. No protest was made to any authority in Mexico; not a word was said or a line written to any United States official, from the consul in Mazatlan to the Secretary of State or the President at Washington; no meeting of the directors of the company was held after the interview with Exall to justify to the stockholders their act of abandonment; no one was sent to Mexico to look after this valuable property, and so little attention or consideration was given to the high-handed outrage of the Mexican officials that it was not even noticed in the newspapers. (Resp. Ev., 78.) In the graphic language of Garth, "the thing just dropped dead;" "the cow was dry."

Eighteen months passed without a single act being done or a step being taken by any officer, director, or stockholder of the bankrupt and defunct company. To all appearances it was dead and buried beyond the hope of resurrection. But, strange to say, a fortuitous circumstance suddenly injected life into the corpse. Mr. Garth, who had turned his dry cow out to pasture, finds he had made a mistake as a dairyman, or at least he has discovered, independent of the slow process of nature, how to again distend the shriveled and exhausted udders. His testimony as to the fortuitous circumstance is as follows (~~Resp. Ev., 58–9~~):

P. 707 - 709

> Q. Tell us how you happened to meet Mr. Rose.
>
> A. I stopped over in Washington, from Richmond, going to New York. I had business in Richmond, and stopped over here at Willard's Hotel. There I met a friend of mine, and he was in conversation with a gentleman, and he introduced me to him—Judge Rose, I think he called him at that time. When he heard my name he said, "I used to know a gentleman of your name, John Garth, of Virginia." I told him that was my father's name, and he seemed to take some interest in me. In talking it over with him, I understood there was a mixed commission, I think it was called, between Mexico and the United States, organized under a treaty, for the purpose of settling any claims preferred by citizens of the United States and Mexico against the other, and I then mentioned to him the fact that Exall had been expelled from the country and run away, and he thought it was——
>
> Q. (Interposing.) Don't say what he thought. Say what he said.

A. He said it was a suitable case to be presented to the commission.

Q. What did he do?

A. He accompanied me to New York the next day.

Q. Did he take you to anyone in Washington before you went to New York?

A. Yes, sir; I think he took me to see Mr. Hubley Ashton.

Q. What position did he hold?

A. I think he held a position as commissioner here. I do not know what position he actually held.

Q. Was he connected with this commission?

A. Yes, sir; I think he was the main man.

Q. Did you go with Judge Rose to see Mr. Hubley Ashton?

A. Yes, sir.

Q. What did you do? State what you did next.

A. After he accompanied me to New York I introduced him to Mr. Exall. I found Mr. Exall and introduced Judge Rose to him, and they had a conversation, I suppose. I was a busy man and left them together and he had a talk with Mr. Exall there.

Q. How long were they together?

A. Three or four hours, perhaps.

Q. Did Judge Rose see Mr. Exall after that?

A. Yes, sir; he came to New York afterwards on that business, and had a conversation with Mr. Exall.

Q. Is that the same Robert Rose who signed the memorial of La Abra Company, which you will find on page 6 of the complainant's bill, the signature "La Abra Silver Mining Company, by their attorney in fact, Robert Rose." Is that the same man?

A. That is the same man.

The notice of the claim was not filed with the Secretary of State until March 17, 1870, but Exall's first affidavit was made December 2, 1869, and the meeting of Garth with Rose must have been a short time before the latter date, although Garth's recollection fixes it early in the fall of 1869. It is plain from the testimony just read that Garth's accidental meeting with Rose was the inception of the claim. It is true, Garth says Bartholow had written to him about the existence of the claims commission before he met Rose (~~Resp. Ev., 70~~), but no action was taken on his letter, and it does not appear to have made any impression on Garth. After Rose got the matter of the claim in his hands, a new and important character appears on the scene in the person of one Gen. Alonzo W. Adams. He was employed by Bartholow without the knowledge of Garth (~~Resp. Ev., 69~~), and his special duty appears to have been to collect evidence to support the claim, and he was given the incentive by means of a contract of a one-third interest in the total amount of the award to be secured. (Senate R., 549.)

So desperate was the claim in the minds of the directors that they were willing to make such an agreement. Adams's contract with the company was signed December 9, 1869, but he had already entered on his work, as Exall's deposition was taken on the 2d and Green's on the 13th of that month, and we know from Garth's testimony that Adams took Green's deposition. (~~Resp. Ev., 61~~.) Adams then went to Mexico, via San Francisco, in which city he took the depositions of Cole, Smith, and Bissell. During this, his first, visit to Mexico he took at Mazat-

lan various depositions, before the American consul, and procured one from Del Valle, taken at the city of Durango; and in 1872 he made a second trip to Mexico, visiting Mazatlan, San Dimas, and Durango City. It may be said the crime of suborning witnesses has not been distinctly brought home to Adams; but it does appear that every material witness which he procured to sustain the claim has been guilty of perjury. If he was seeking only honest witnesses, it is very strange that he should have found only perjurers. It is a striking and singular fact that Adams did not take the depositions of any of the American employees at the mines of La Abra Company, except Exall and Granger. (Ex. B, 268, for list.) Exall knew of the whereabouts of Collins, the head miner, and Elder, the assayer, but it did not suit Adams's purpose to examine them. The respondents' brief makes frequent reference to Adams's conduct, which it characterizes as honorable and prudent, and cites the Senate Report (p. 927) to show that certain charges against him have broken down and been abandoned (p. 25). The examination therein cited relates to charges against Adams contained in H. Ex. Doc. 103, Forty-eighth Congress, first session, which were submitted to the Secretary of State and by the President to Congress. It will be necessary to examine Doc. 103, frequently cited in respondents' brief, to understand just how far those charges have broken down and been abandoned.

(Objection, sustained by the court, being made to the use of Doc. 103, as porposed, the remarks made on this point are omitted.)

ALLEGED NEGLIGENCE OF MEXICO.

I desire now to make a brief reference to the criticism which has been made against Mexico in connection with that case. It is alleged that abundant time and opportunity was afforded the Mexican agent to procure and present defensive evidence, and the fact is cited that the case was pending five years before the final award was rendered, as though that time was granted for defensive evidence.

The question whether Mexico was negligent in making its defense before the commission is not one to be determined by this court, but for a proper understanding of the fraud charged in the bill I think it desirable to bring to your honors' attention certain facts. When the commission met the Mexican agent was confronted with 1,017 claims of American citizens, aggregating $470,126,613. During almost the entire time the commission was in session Mexico was distracted by internal revolutions and local disorders. The country did not assume the stable condition which has marked its later history until 1876, when General Diaz became President. Under most adverse circumstances the Mexican agent set to work industriously to defend his country against the enormous mass of claims presented. He succeeded in defeating 99 per cent of the entire amount, and when the umpire had concluded the labors of the commission the total awards against Mexico were $4,125,000, of which the two cases pending in this court represent $1,170,000, or considerably more than one-fourth of that aggregate.

Under the circumstances it is not strange that out of over one thousand claims two without merit should have been successful, and it imposes the weightier obligation upon the United States to thoroughly investigate the charges of fraud respecting these two.

REVIEW OF CLAIMANTS' DEPOSITIONS.

In the light of the facts which I have established in the foregoing review of the case, I desire to take up the depositions of some of the more important witnesses for the claimants before the commission, among whom I embrace the two superintendents, Bartholow and Exall, and the president of the company, Collins. After this review it will readily be seen that they have falsely and knowingly set forth alleged facts which never existed, falsely and knowingly misstated and distorted facts which did exist, and they have committed perjury in the most unblushing manner. (See depositions in Exhibit A, of W. G. S. Clark, p. ~~367~~; John Cole, ~~361~~; John P. Cryder, ~~374~~; Jesus Chavarria, ~~386~~; Thomas J. Bartholow, ~~472~~; Charles H. Exall, ~~336~~ and ~~455~~; George C. Collins, ~~344~~ and ~~453~~.)

PARAGRAPH XVI OF BILL OF COMPLAINT.

The respondents' counsel, in his brief, has seen fit to argue his side of the case by discussing in detail the specifications in Paragraph XVI of the bill of complaint. In view of the new testimony and of the analysis which I have made, I think it has been shown that this paragraph of the bill has been substantially and conclusively

maintained by the Government. I feel sure your honors will conclude that rarely has a case involving such a mass of details and so long and varied a history been so fully made out, and that the respondents' counsel has not successfully assailed a single material specification in the paragraph.

CONCLUSION OF ARGUMENT.

I have now concluded my review of the evidence before this court. I feel confident I have redeemed my promise to establish to the satisfaction of your honors that not more than two of the twenty-eight averments in the claimants' memorial, as paragraphed by me, are true in fact; that the other twenty-six are false in whole or in part; that every averment which is essential to establish the claim is absolutely false; and that the award made by the commission was, in the language of the statute, obtained by fraud, effectuated by means of false swearing and other false and fraudulent practices on the part of La Abra Company, its agents and attorneys.

The review which I have made establishes beyond any question that the cause of abandonment of the mines was the bankrupt condition of the company; that when all the capital was spent, the credit exhausted, and the ores proved worthless, there was nothing else to be done than abandon to the mines. It is manifest that when Exall returned to New York and made his report the entire enterprise came to an end, no steps were taken indicating that the company had any complaint against Mexico, and

no thought was entertained by any of its officers of instituting a claim. When the claims commission was organized and lawyers began to be busy respecting it, Garth, the treasurer and general manager, and Bartholow and Exall, two of the superintendents, with the aid of their agent, Adams, fabricated a claim, every essential allegation to sustain which they knew to be false and fraudulent, and at the proper time Collins, the president, proved their willing tool and knowingly joined in the conspiracy.

I doubt whether, in the long course of your honors' judicial experience, you have had to deal with a more unblushing and shameful fraud than this. It is the more aggravated in its character because the conspirators did not scruple to make use of the name and great influence of the Government of the United States to perpetrate this fraud upon a neighboring and friendly Government. But fortunately for our national reputation the men who have stood at the head of affairs in our Government have in all our history, thus far, been actuated by a high sense of honor and justice, and when the charges of fraud in this case were brought to the attention of the Secretary of State and the successive Presidents they have not hesitated to insist that the honor of the United States required that these charges should be judicially investigated. Thanks only to the obstructive tactics of the claimants, this long-deferred desire of the Government of the United States is only now being realized. Crime is swift and justice is often slow of foot, but in well-regulated society punishment generally overtakes the guilty.

More than twenty years have passed since this fraud had its culmination in the award of a well-meaning but deceived judge. We are now reaching the close of the investigation, so long sought. I leave the case in the hands of your honors in the perfect assurance that in the decision which you shall render the honor of the United States will be protected and this great fraud finally defeated.

O